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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Summary

In the present report, submitted pursuant to Human Rights Council resolution 26/22, the Working Group focuses on how the Guiding Principles on Business and Human Rights need to be further embedded throughout United Nations programmes and processes in order to improve policy coherence for inclusive and sustainable development.

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Contents

		Paragraphs	*Page*
I.	Introduction	1–6	3
II.	Background and context: emerging convergence	7–14	3
III.	Integrating the Guiding Principles into United Nations work and processes with a "business interface": investment, trade and financial institutions	15–50	6
	A. Investment	18–35	6
	B. Trade agreements and trade-related issues	36–42	11
	C. Financial institutions	43–50	13
IV.	Sustainable development	51–78	15
	A. Post-2015 framework	54–68	16
	B. Beyond the post-2015 framework	69–78	19
V.	United Nations partnerships with the private sector	79–87	21
	A. Insufficient awareness of human rights responsibilities in the global business community	81–83	21
	B. Lack of capacity and understanding to grapple with the implications of the Guiding Principles	84–87	21
VI.	Conclusions and recommendations	88–91	23

I. Introduction

1. The year 2015 will be critical for setting out the course for a more just, more equitable and more sustainable future for all. As recognized in the emerging post-2015 sustainable development agenda, better protection of, and respect for, human rights in the economic sphere must be a central pillar of this endeavour.

2. Private sector financing and economic activities have helped lift millions out of poverty and contributed to the realization of human rights. However, governance gaps within and between countries have contributed to an environment in which business activities across a range of sectors and countries have undermined respect for human rights. Thus, the growing role of business enterprises in the age of globalization has brought into relief not only the need for more effective policies and regulation, but also the need to make business enterprises part of the solutions to today's global challenges.

3. The United Nations, which was set up to lead global efforts on human rights, development and peace and security, has a particular role to play in supporting global action and governance frameworks to address the way business operates and affects human rights and development. These issues all come together in the United Nations "Protect, Respect and Remedy" Framework (A/HRC/8/5) and the Guiding Principles on Business and Human Rights (A/HRC/17/31), endorsed by the Human Rights Council in 2011 as the authoritative global reference point on the respective roles, obligations and responsibilities of Governments and business enterprises for preventing and addressing adverse human rights impacts resulting from business activities.

4. The present report contains examples of the application of the Guiding Principles in ongoing work by the United Nations. It highlights further opportunities whereby United Nations entities and processes (including Member State-led) can contribute to scaled-up action on the Guiding Principles and to greater policy coherence between business- and development-oriented frameworks and human rights considerations. It follows on from reports of the Secretary-General calling for the business and human rights agenda and the Guiding Principles to be embedded throughout the United Nations system (A/HRC/21/21 and Corr.1 and A/HRC/26/20).

5. First briefly set out is the context of emerging convergence of current practice and initiatives around the framework set out in the Guiding Principles (sect. II). The importance of integrating the Guiding Principles into specific areas of United Nations work and processes is then discussed, focusing on the areas of trade, investment and financial institutions (sect. III), on efforts to promote sustainable development (sect. IV) and on United Nations partnerships with the private sector in support of United Nations goals (sect. V).

6. The report is not intended to cover the entire spectrum of relevant United Nations work and processes, nor provide a comprehensive mapping of current practice. Rather, it seeks to signal and raise awareness about the importance of the business and human rights perspective to development-related work of the United Nations and about ways in which the Guiding Principles can help address challenges of policy incoherence. Its ultimate objective is thus to make a contribution towards achieving socially sustainable development founded on respect for human rights for all.

II. Background and context: emerging convergence

7. Global standards and initiatives relating to business and human rights have started to converge around the Guiding Principles. The corporate responsibility to respect human

rights as set out in the Guiding Principles has been incorporated into key frameworks such as the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the International Organization for Standardization (ISO standard 26000: 2010 on guidance on social responsibility of businesses and other organizations, the International Finance Corporation Sustainability Framework for its lending operations, the Global Reporting Initiative's Sustainability Reporting Guidelines (fourth generation (G4)), the Principles for Responsible Investment in Agriculture and Food Systems, approved by the Committee on World Food Security and into key United Nations frameworks for the private sector such as the Global Compact.

8. Regional organizations are following suit. The European Commission endorsed the Guiding Principles in its 2011 corporate social responsibility strategy and made a commitment to support their implementation, including by publishing guidance material and calling on European Union member States to develop national action plans.[1] The Council of Europe has also taken steps to promote the Guiding Principles, including a declaration by the Committee of Ministers in support of the Principles.[2] Among other developments, the Organization of American States passed a resolution in 2014 expressing commitment to promote the Guiding Principles and calling on its member States to apply them;[3] and the African Union supported the Working Group in holding a regional forum on business and human rights in Africa in 2014 and expressed its commitment to supporting the development of an African framework for implementation of the Guiding Principles.[4] Further, a baseline analysis carried out by the Association of Southeast Asian Nations Intergovernmental Commission on Human Rights on the nexus between business and human rights was published in November 2014, referring to the Guiding Principles as a key internationally recognized framework that should guide developments in the region.[5]

9. There is an emerging trend of more States taking steps to develop national action plans on business and human rights based on the Guiding Principles, often spurred by national human rights institutions and civil society entities.[6]

10. Surveys, such as those by the Working Group[7] and the Economist Intelligence Unit[8], and discussions at the annual Forum on Business and Human Rights[9] indicate that a

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[1] Available from http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/.

[2] Available from www.coe.int/t/dghl/standardsetting/hrpolicy/Other_Committees/HR_and_Business/Default_en.asp.

[3] OAS General Assembly resolution 2840 (XLIV-O/14).

[4] See OHCHR press release (18 September 2014), "UN and AU commit to advance business and human rights agenda in Africa", available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15053.

[5] Available from business-humanrights.org/sites/default/files/documents/AICHRs_Thematic_Study_on_CSR_and_Human_Rights_in_ASEAN.pdf.

[6] See the Working Group's web page for State national action plans at www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx. See also http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans.

[7] Available from www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx.

[8] Available from www.economistinsights.com/business-strategy/analysis/road-principles-practice.

[9] See e.g. the Working Group's report on identifying emerging approaches and lessons learned in corporate respect for human rights: reflections from discussions held at the 2014 Forum on Business and Human Rights (A/HRC/29/28/Add.3).

growing number of companies are becoming aware of, and taking steps to, implement the Guiding Principles in policies and company procedures.

11. Industry bodies such as the mining industry's International Council on Mining and Metals and the oil and gas sector's International Petroleum Industry Environmental Conservation Association have developed several tools[10] to help companies to implement the Guiding Principles. Corporate law firms and bar associations are also increasingly emphasizing that corporate practice not only needs to be in compliance with domestic legal requirements, but also aligned with international human rights standards, in particular the Guiding Principles.[11] In the area of finance, there is growing recognition among investors of the utility of the Guiding Principles as a framework for managing social risks in a business context.[12]

12. The Working Group has been actively supporting these efforts through its engagement with stakeholder groups. While it is encouraged by the many examples of progress, it also considers that most of the hard work of translating policy statements and commitments into action remains to be done. In particular, concerns about elusive progress in achieving access to remedy for victims of corporate-related human rights abuse must be heeded. Such concerns were an important factor behind the civil society campaign in support of the decision of the Human Rights Council to establish an open-ended intergovernmental working group with the mandate to draw up an internationally legally binding instrument on transnational corporations.

13. Recent efforts to map progress by both States and businesses in the form of the Business and Human Rights Resource Centre's "action platforms",[13] guidance on reporting[14] and initiatives aimed at ranking or benchmarking the practice of individual companies[15] all have potential for spurring the faster change needed.

14. Within the United Nation system, the Office of the High Commissioner for Human Rights (OHCHR) serves as a focal point for the business and human rights agenda. Equally, the International Labour Organization (ILO) has a central role in working with States, business enterprises and trade unions to promote and monitor the implementation of international labour standards that are part of the normative content of the Guiding Principles, together with other human rights standards. Beyond OHCHR and ILO, United Nations agencies, programmes and processes have supported the Guiding Principles, but on the whole have been slow in integrating them into key frameworks (see A/HRC/26/20,

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[10] Available from www.icmm.com/page/84154/our-work/projects/articles/business-and-human-rights and www.ipieca.org/topic/human-rights/resources.

[11] See the International Bar Association guidance for bar associations and business lawyers on the implementation of the Guiding Principles, at www.ibanet.org/Legal_Projects_Team/Business_and_Human_Rights_for_the_Legal_Profession.aspx. For development of human rights compliance policies among individual law firms, see www.ibanet.org/Article/Detail.aspx?ArticleUid=68762a20-bf17-4f85-8c4f-81e3bbe88c16.

[12] See for example a statement by investors with a total of USD 3.91 trillion under asset management, in support of a reporting framework developed by the Shift non-profit organization to assist companies in implementing the Guiding Principles, available from www.ungpreporting.org/early-adopters/investor-statement/.

[13] Available from business-humanrights.org/en/company-action-platform and business-humanrights.org/en/government-action-platform.

[14] Available from www.ungpreporting.org/.

[15] See "Rankings, Benchmarks, Reporting and More: Motivating Action on Business and Human Rights", available from www.huffingtonpost.com/amol-mehra/rankings-benchmarks-repor_b_6761934.html.

para. 81). The United Nations should use its unique status to drive further convergence on the Guiding Principles, and in doing so improve the policy coherence of governance frameworks aimed at managing adverse impacts of economic activity and supporting sustainable development.

III. Integrating the Guiding Principles into United Nations work and processes with a "business interface": investment, trade and financial institutions

15. As the Secretary-General urged in his synthesis report on the post-2015 sustainable development agenda, there is a need to remedy the policy incoherence between current modes of international governance in matters of trade, finance and investment on the one hand, and our norms and standards for labour, the environment, human rights, equality and sustainability on the other and to ensure investment policies that are in line with the Guiding Principles (see A/69/700, paras. 95 and 105).

16. Despite this recognition, uptake across the United Nations has been slow, with some notable exceptions. Tangible progress is needed to increase the momentum of convergence around the Guiding Principles in order to manage and address adverse human rights impacts linked to business activities. Concerns about the possible negative impacts on people and the environment of current investment, trade and financial practices are a regular feature of the global debate and a central premise of efforts to reform global governance.

17. With regard to action within the United Nations system, there are great potential dividends to be reaped from aligning efforts on investment, trade and financial institutions with the Guiding Principles. The United Nations system has great potential for affecting business practice, be it through facilitation of dialogue, be it through facilitation of dialogue, consensus-building, lesson sharing and capacity-building to encourage responsible business conduct, or through more direct involvement in shaping rules and governing frameworks

A. Investment

18. It is highlighted in the Guiding Principles that investment policies and frameworks must be consistent with international human rights standards. The primary responsibility for meeting this objective is held by States, which, as set out in Guiding Principle 9, should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts. The importance of due diligence and human rights impact assessments in the context of trade and investment agreements has also been consistently raised by other entities of the United Nations human rights system.[16]

19. The former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises devoted a significant portion of his mandate to these questions, focusing in particular on: (a) State-investor contracts and the effect of "stabilization clauses" on the policy space of States to protect

[16] For example, the Special Rapporteur on the right to food developed guiding principles on human rights impact assessments of trade and investment agreements (A/HRC/19/59/Add.5). See also the statement by the Committee on Economic, Social and Cultural Rights entitled "Globalization and economic, social and cultural rights" (1998).

human rights; (b) the importance of greater transparency in international investment arbitration where human rights issues are at stake; and (c) how provisions in bilateral investment treaties may constrain States' ability to adopt legitimate policy reforms, including for human rights.[17] Since then, further initiatives have emerged, building on his work, as highlighted in the following sections.

1. Promoting responsible contracts

20. The work of the Special Representative highlighted State-investor contracts as a key area in which the Guiding Principles could add significant value. It led to the development of the principles for responsible contracts (A/HRC/17/31/Add.3).

21. The Working Group, together with the Office of the High Commissioner for Human Rights (OHCHR), is actively disseminating the principles for responsible contracts and the training developed by OHCHR on those principles,[18] as tools for government negotiators, parliamentarians, commercial negotiators and civil society to help ensure the integration of the management of human rights risks into the negotiation of State-investor contracts.

22. The principles for responsible contracts are increasingly being used to inform technical advice in the context of investment contract negotiations for better management of stakeholder-related risks. More work needs to be done to explore practices and promote further uptake. The Working Group would like to encourage relevant stakeholders to identify examples of how the principles have been applied and how they work in leveraging better practices. In particular, it calls for more work to be done, including on the technical details, by relevant parties such as law societies, law committees, business associations and groups of companies dealing with these issues, and negotiator communities such as the Association of International Petroleum Negotiators, as well as government experts.

2. Investment policy and global value chains

23. One of the principal global multi-stakeholder platforms for discussions on investment policies and practice is the United Nations Conference on Trade and Development (UNCTAD) World Investment Forum, which involves Governments, businesses, civil society and academic experts. At the World Investment Forum 2012, the investment policy framework for sustainable development was launched. It consists of a set of core principles for investment policymaking, guidelines for national investment policies, and guidance for policymakers on how to engage in the international investment policy regime. The framework refers to the Guiding Principles in the context of encouraging investors to comply with internationally recognized standards and to carry out corporate due diligence.[19]

24. To catalyse further discussion on how to integrate concern for human rights into investment policy, UNCTAD and OHCHR, together with the London School of Economics Investment and Human Rights Project, organized two panel discussions on investment and human rights at the 2014 World Investment Forum. The panels reflected on the integration of human rights into government investment policymaking and efforts by United Nations organizations to support such integration. An example is UNCTAD guidance to States on the investment policy framework for sustainable development and the opportunities it offers

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[17] A catalogue of some of this work is available from http://business-humanrights.org/en/special-representative/un-secretary-generals-special-representative-on-business-human-rights/materials-by-topic/investment.

[18] Available from www.ohchr.org/EN/Issues/Business/Pages/trainingmodules.aspx.

[19] http://unctad.org/en/PublicationsLibrary/diaepcb2012d5_en.pdf.

for integrating human rights considerations into national investment policies and regulations, and into international investment agreements. The framework has been used in practice by Governments to guide their efforts in reforming investment rules and by civil society as a benchmark to evaluate the impact of investment policies on sustainable development goals.

25. Another example is the role of the African Minerals Development Centre of the Economic Commission for Africa (ECA) in supporting implementation of the Africa Mining Vision and promoting policy developments aligned with human rights standards. It was highlighted in the discussions at the World Investment Forum that much more learning and work needed to be done to understand the connections between human rights and investment so that domestic policy and regulation, international investment instruments and dispute resolution mechanisms are both designed to, and trusted by the wider public to, foster the right outcomes for investors and for people.[20]

26. Another entry point is the work of UNCTAD on corporate social responsibility in global value chains.[21] It seeks to analyse policies on corporate social responsibility with a view to identifying best practices for maximizing the development impact of corporate activities, in particular by transnational corporations, for which the Guiding Principles provide a useful reference. Ongoing work includes a forthcoming paper on corporate social responsibility in export processing zones, which highlights the State duty to protect in relation to business activities in such zones.[22]

27. One platform with potential for contributing to further convergence around the Guiding Principles is the inter-agency round table on corporate social responsibility jointly organized by UNCTAD, ILO and OECD.[23] The round table is an event organized to provide an opportunity for international organizations to better collaborate and align their activities and give States a "one-stop shop" for discussing corporate social responsibility issues with relevant experts within international organizations. It could play an important role in promoting implementation of the Guiding Principles and policies and practices aligned with international human rights standards.

28. One cross-cutting aspect related to making progress on implementation of the Guiding Principles is the issue of corporate reporting on human rights commitments and due diligence in the context of corporate social responsibility. A recent framework developed to support corporate reporting on the Guiding Principles,[24] for example, presents opportunities for making progress. There is a general interest in ensuring access to information upon which market decisions can be based – including in the contexts of investment, lending, mergers and acquisitions, and trade. It would be only logical for such information to disclose how risks of harm to people are assessed and addressed. This point was also highlighted by a group of investors welcoming the above-mentioned reporting framework, which emphasized that meaningful disclosure of human rights performance

[20] See summary prepared by the London School of Economics Laboratory for Advanced Research on the Global Economy Investment and Human Rights Project, available from http://blogs.lse.ac.uk/investment-and-human-rights/portfolio-items/background-and-summary-investment-human-rights-relevance-and-integration-panel-discussions-2014-world-investment-forum/.

[21] Available from http://unctad.org/en/Pages/DIAE/Corporate-Social-Responsibility.aspx.

[22] For a summary of some the findings, see UNCTAD, World Investment Report 2013, chapt. IV, sect. D, 4.b.

[23] www.csrroundtable.org/about/.

[24] www.ungpreporting.org/.

could play a significant role in reducing a company's human rights risks, contributing to a company's competitive advantage and strengthening its long-term financial stability.[25]

3. International investment agreements and dispute settlements

29. Carrying forward discussions about reforming the international investment agreements regime, in February 2015 UNCTAD convened a range of stakeholders from the investment and development community to identify strategies and action points for a sustainable development friendly international investment framework and improved global investment governance.[26] The Guiding Principles can also serve as a useful reference for addressing some of the current failures of the international investment agreements regime, as they provide an agreed normative framework with benchmarks for assessing and informing government and corporate action to assess and address the adverse human rights impacts of business activities.

30. The world of international investment is both complex and fluid, and is characterized by a growing number of both international investment agreements and investor-State dispute settlement cases. At the end of 2014 there were 3,268 such international investment agreements and 608 known investor-State dispute settlement cases.[27] In particular, the increasing number of investor-State dispute settlement cases has prompted debate about the legitimacy of the system, especially where high-profile negotiations on international investment agreements have been the subject of public controversy. The expansion in the use and interpretation of provisions in international investment agreements to protect investors and subject disputes to binding international arbitration has in a number of cases enabled investors to sue Governments for policies and regulations introduced to pursue public interest goals, such as new labour standards and environmental protection. The consequence may be that the States implicated are unable to preserve adequate policy space to meet their human rights obligations.

31. Some of the fundamental questions relating to reform of the international investment agreements regime indicate the relevance of the Guiding Principles. For example, there is an increasing realization that the success of investments requires not only the management of social and environmental risks, but also of adverse impacts on people. However, there is still not much experience in reflecting human rights risks in international investment tools. Moreover, given that investment is intended to enable development, the question arises of how investment tools should be designed to bolster, rather than undermine, the ability of host States to protect human rights and realize development goals. Such perspectives and experiences should be brought to the table in discussions on reforming the regime. The Working Group also considers that there is a particular need for empirical research on the links between the way in which investment agreements and arbitration operate and the impact on enjoyment of human rights.

4. Transparency in investment arbitration

32. A significant opportunity for increasing transparency in the area of investor-State arbitration has arisen from work of the Working Group on Arbitration and Conciliation of the United Nations Commission on International Trade Law (UNCITRAL). The UNCITRAL Working Group started working on transparency in 2010, with a mandate that stressed the importance of ensuring transparency in investor-State dispute settlements

[25] www.ungpreporting.org/early-adopters/investor-statement/.

[26] http://unctad-worldinvestmentforum.org/followup-events/single-year-expert-meeting/.

[27] UNCTAD, International Investment Agreements Issues Note No. 1, February 2015.

(A/6317, para. 314). In a written submission in support of that mandate, a Member State observed that the lack of transparency in investor-State arbitration was contrary to the fundamental principles of good governance and human rights upon which the United Nations is founded (see A/CN.9/662, para. 20). That work has culminated in two major texts: (a) the rules on transparency in treaty-based investor-State arbitration, which came into effect on 1 April 2014; and (b) a convention on transparency[28] (the United Nations Convention on Transparency), which was finalized by the Commission in July 2014 and opened for signature on 17 March 2015. The Working Group on the issue of human rights and transnational corporations and other business enterprises welcomes these new transparency rules.

33. Both the Guiding Principles and the UNCITRAL work on transparency back procedural and legal transparency and take a practical approach to achieving that aim. The new UNCITRAL rules on transparency seek to address a regular concern with investor-State dispute settlement cases – namely that their typically confidential and non-participatory nature does not allow for involvement by affected stakeholders, or for an adequate balance between the need for States to ensure that they retain adequate policy and regulatory ability to protect human rights and provide investor protection, as clarified in Guiding Principle 9. With the new UNCITRAL rules and the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, States have a practical means to promote good governance and respect for human rights with a broader policy framework that is aligned with the Guiding Principles.[29]

34. These rules, when they apply, provide a transparent procedural regime under which investment treaty arbitrations are conducted. They can be used in investor-State arbitrations initiated under UNCITRAL arbitration rules, as well as under other institutional arbitration rules or in ad hoc proceedings. States can now incorporate them into investment treaties concluded on or after 1 April 2014, but for the rules to apply to disputes arising under the more than 3,000 investment treaties concluded before that date, the States parties to a treaty, or disputing parties in an investor-State arbitration, would need to agree to apply the rules under that treaty or to that dispute. This highlights the importance of the Convention on Transparency, which provides an efficient, multilateral mechanism by which States can agree, subject to relevant reservations, to apply the rules to all arbitrations arising under their investment treaties concluded before 1 April 2014. The Working Group welcomes the rules and considers that an obvious step for States to remedy incoherence between current modes of investment with norms for good governance and human rights considerations, including those set out in the Guiding Principles, would be to sign and ratify the Convention.

35. The Working Group is pleased to have had the opportunity to engage with UNCITRAL, including at its forty-seventh session in July 2014, and to note that in the report of that session the Commission agreed that the UNCITRAL secretariat should monitor developments in the area of business and human rights, in cooperation with relevant bodies within the United Nations and beyond and inform the Commission about developments of relevance to UNCITRAL work (see A/69/17, para. 204).

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[28] A/CN.9/812 and www.uncitral.org/pdf/english/texts/arbitration/transparency-convention/Transparency-Convention-e.pdf. The Working Group chairperson was invited to speak at the March 2015 signing ceremony.

[29] http://blogs.lse.ac.uk/investment-and-human-rights/portfolio-items/transparency-in-investment-treaty-arbitration-and-the-un-guiding-principles-on-business-and-human-rights-the-new-uncitral-rules-and-convention-on-transparency/.

B. Trade agreements and trade-related issues

36. The debate on the links between trade and human rights, and in particular labour rights, is not new.[30] Yet, while the Guiding Principles have begun to inform some discussions in the area of investment regimes, the idea of translating the Guiding Principles to the area of multilateral trade frameworks, notably in the context of the World Trade Organization (WTO), remains underexplored.

1. World Trade Organization and international trade rules

37. The former Director General of WTO, Pascal Lamy, contributed to the debate during a panel discussion on the links between the global economic architecture and the business and human rights agenda at the 2014 annual Forum on Business and Human Rights. He argued that the current international system was failing in integrating human rights in the areas of trade and economic governance, and called for a more integrated and coherent approach. The "clustered" system whereby the Human Rights Council did not consider trade and finance issues in country reviews, and whereby the WTO did not look at human rights when doing country trade policy reviews, demonstrated the limits of the system. A specific example illustrating this gap was the continued challenge of getting WTO members to accept that ILO should have observer status at WTO sessions, a step that could contribute to greater coherence.[31] Mr. Lamy had, in his capacity as WTO Director General, pointed out that for trade to act as a positive vector for the reinforcement of human rights, a coordinated international effort was needed, and that a coherent approach that integrated trade and human rights policy goals should be developed.[32]

38. In the commentary to Guiding Principle 10, the need for greater policy coherence at the international level is stressed, including where States participate in multilateral institutions that deal with business-related issues, such as international trade and financial institutions. They should do so to meet legal obligations, as States retain their international human rights obligations when they participate in such institutions, but also for policy reasons, as collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights. The Guiding Principles provide an authoritative global reference point for such efforts and could serve as the basis for building cumulative progress "that takes into account the respective roles and responsibilities of all relevant stakeholders".

2. Labour provisions in free trade agreements

39. A review by ILO and the International Institute for Labour Studies highlighted that, alongside the rapid increase in bilateral and regional free trade, there has also been a growing number of social and labour provisions included in such agreements: 58 in 2013, compared to only 4 in 1995.[33] This is a positive trend, which has had positive impacts on

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[30] See Institute for Human Rights and Business, *State of Play: Human Rights in the Political Economy of States: Avenues for Application*, p. 43.

[31] Recording of presentation available from http://webtv.un.org/meetings-events/human-rights-council/forum-on-business-and-human-rights/watch/strengthening-the-links-between-the-global-economic-architecture-and-the-business-and-human-rights-agenda-forum-on-business-and-human-rights-2014/3925401980001.

[32] WTO News, "Lamy calls for mindset change to align trade and human rights" (13 January 2010). Available at www.wto.org/english/news_e/sppl_e/sppl146_e.htm.

[33] ILO and the International Institute for Labour Studies, "Social dimensions of free trade agreements" Studies on growth with equity (2013), p. 5. Available from **Error! Hyperlink reference not valid.**

national labour standards and the enforcement of international standards.[14] However, it also poses challenges, in terms of the risk of confusion and diverging interpretation, and thereby of uniform application and protection.[15] While it is important to take the latter concern into account, there should nevertheless be scope for going further, beyond the current focus on labour provisions. It is pointed out in a research report on the "state of play" of the political economy of business and human rights that this is possible, as reflected in specific examples of existing trade agreements.[16] A cautious approach would thus be to couple the increased call for integration of human rights needs with international coordination and alignment around common tools and benchmarks.

3. Public procurement

40. A specific policy area with links to trade in which there has been considerable movement since the endorsement of the Guiding Principles is public procurement. It is noted in the commentary to Guiding Principle 6 that States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. One estimate puts the magnitude of public procurement at 15–25 per cent of the gross domestic product of OECD member States, and even higher in a number of countries in other regions.[17] As emphasized in the commentary to Guiding Principle 6, this provides States—individually and collectively—with unique opportunities to promote awareness of and respect for human rights in such transactions. Concerns that human rights requirements would be perceived as trade barriers and be at odds with competition and trade rules have been cited as a common obstacle to introducing such a consideration into public procurement procedures.However, in order to meet their duty to protect human rights and incentivize business respect for human rights in the context of procurement activities, competition considerations should not trump international human rights standards. Indeed, trade agreements on procurement make it clear that governments retain the authority to adopt measures that protect public morals, safety and order.

41. The impact of sustainable public procurement on responsible business conduct was the topic of the 2014 inter-agency round table on corporate social responsibility, at which the importance of standards set by ILO and the Guiding Principles was mentioned. It was affirmed that there was now near-universal consensus that sustainable procurement practice was fully compatible with free trade and an important part of public policy. Moreover, sustainable procurement was a concern for States in all regions and at different levels of economic development.[18]

42. As seen in the 2014 annual Forum on Business and Human Rights, there is increased interest in a number of jurisdictions in exploring ways to integrate human rights into public procurement.[19] However, specific measures are few. There are ongoing initiatives to

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[14] "Labour provisions in free trade agreements: fostering their consistency with the ILO standards system", background paper, Social dimensions of free trade agreements, available from http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_237940.pdf.

[15] Ibid.

[16] See Institute for Human Rights and Business, *State of Play* (see footnote 41), chap. 5.

[17] Ibid., p. 53.

[18] See www.csrroundtable.org/wp-content/uploads/2014/12/CSR-Roundtable-Sumary-revised-4.12.14.pdf.

[19] See for example the session overview of the 2014 UN Forum on Business and Human Rights, organized by the Working Group in collaboration with external partners, available from

address this gap, aimed at developing practical guidance and good practice models for public authorities to integrate human rights due diligence procedures and requirements when purchasing goods and services from the private sector.[40] As emphasized at the 2014 corporate social responsibility round table discussions, collaboration is essential to reach a critical scale. Members of the United Nations system can play a role in supporting developments towards more State action and aligning multilateral frameworks for public procurement with the Guiding Principles. Among the opportunities with potential for contributing to reaching greater scale, both UNCITRAL guidance for procurement and infrastructure projects and WTO discussions on government procurement could and should make reference to the Guiding Principles and take note of emerging tools and good practices.

C. Financial institutions

1. World Bank Group

43. In the financial sector, the World Bank and its private-sector lending arm, the International Finance Corporation, is another key player within the United Nations system for enabling alignment with the Guiding Principles. The Corporation has already incorporated elements of the Guiding Principles into its social and environmental sustainability framework, updated in 2012.[41] The current review of the World Bank's Environmental and Social Framework[42] offers a further opportunity for integrating key elements of the Guiding Principles to prevent and mitigate the risk of adverse human rights impacts related to the Bank's lending activities.

44. It was stressed in a joint open letter to the World Bank President by several special procedures mandate holders, including the Working Group,[43] that the Bank's safeguard standards should be premised on a recognition of the central importance of respecting and promoting human rights in order to respond to the challenges of the twenty-first century. Moreover, it was stated that, consistent with international law, with its own obligations and with those of its member States, the Bank should acknowledge the relevance of human rights in its overall programme objectives and incorporate human rights due diligence into its risk management policies. Similar recommendations have been made with respect to regional and national financial institutions.[44]

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www.ohchr.org/Documents/Issues/Business/ForumSession3/ParallelEvents/ICAR_DFI.pdf; and Institute for Human Rights and Business, *State of Play* (see footnote 41), chap. 6.

[40] See International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights, International Learning Lab: Procurement and Human Rights (2015, forthcoming); ICAR, "Turning a blind eye? Respecting human rights in government purchasing" (2014), available from http://accountabilityroundtable.org/wp-content/uploads/2014/09/Procurement-Report-FINAL.pdf; Institute for Human Rights and Business, "Guiding Public Procurement: Protecting Rights by Purchasing Right", available from www.ihrb.org/our-work/guiding-public-procurement.html.

[41] Available from www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes.

[42] Available from http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies.

[43] Available from www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf.

[44] See for example the recommendation of the Independent Expert on the effects of foreign debt that Japan strengthen the accountability mechanisms and safeguard policies of JICA, NEXI and JBIC and

45. A failure to align the World Bank Framework with the Guiding Principles would mean that the World Bank risks falling behind standard-development that has taken place in the context of private finance. The most notable example is the Equator Principles,[45] a much-cited risk management framework adopted by a group of 79 of the world's major financial institutions covering as much as 70 per cent of international "project finance" in the so-called emerging markets. When they were revised in 2013, they were aligned with key elements of the pillar of the Guiding Principles on the corporate responsibility to respect. The Equator Principles have been instrumental in promoting convergence around common environmental and social standards in the global financial sector, and are increasingly used by public financial institutions, including multilateral development banks and export credit agencies.

46. Thus the alignment of the Framework with the Guiding Principles is not only critical for institutional coherence. A failure by the World Bank to go in the same direction as the International Finance Corporation and the Equator Principles could jeopardize the momentum noted above. Conversely, an updated Framework aligned with the Guiding Principles would constitute a significant contribution to reinforcing that momentum.

2. Financial system regulation

47. Another issue that merits wider attention is the links between international financial regulation and sustainable development. The United Nations Environment Programme (UNEP), through its inquiry into the design of a sustainable financial system,[46] explores how the rules that govern the financial system—(standards, metrics, incentives, regulations—and the roles and responsibilities of global and national financial institutions can help better mobilize capital for sustainable development. In order to do so, UNEP and the Institute for Human Rights and Business convened a meeting in December 2014 on the value of a human rights-focused examination of the rules of financial systems.[47] The meeting report[48] suggests that the Guiding Principles could be a useful framework for the UNEP inquiry, so that the focus is both on the State duty to protect, in line with States' international human rights obligations, and on the responsibility of business enterprises, including in the financial sector, to respect human rights.

48. These issues were further developed at a second meeting, in March 2015, which will inform a forthcoming working paper for the UNEP inquiry. Questions identified included exploring the different levels at which the financial sector has an impact on human rights; human rights due diligence with regard to financial products, other than project finance, such as derivatives and commodities trading, and the implications of human rights considerations for monetary policy.[49]

49. The Working Group considers that these are complex and difficult questions, on which it would be useful to shed further light with a view to achieving greater policy coherence at different levels of the patchwork of international, regional and domestic governance systems.

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align their safeguard policies with the Guiding Principles on Business and Human Rights (A/HRC/25/50/Add.2, para. 68 (h)).

[45] Available from www.equator-principles.com/index.php/about-ep/about-ep.

[46] See Inquiry website at www.unep.org/inquiry/.

[47] http://www.ihrb.org/news/human-rights-dimensions-of-a-green-and-inclusive-financial-system.html.

[48] Available from www.ihrb.org/pdf/2014-12-04-IHRB-UNEP-Inquiry-Meeting-Report.pdf.

[49] www.ihrb.org/news/human-rights-dimensions-green-and-inclusive-financial-system.html.

3. Sustainable stock exchanges

50. The Sustainable Stock Exchanges Initiative is yet another area of finance where explicit alignment with the Guiding Principles could add value. The Initiative, which is co-convened by the United Nations-supported Principles for Responsible Investment, UNCTAD, the UNEP Finance Initiative and the Global Compact, is a peer-to-peer learning platform for exploring how exchanges, in collaboration with investors, regulators and companies, can enhance corporate transparency—and ultimately performance—on environmental, social and corporate governance issues and encourage sustainable investment. The Guiding Principles could offer normative and operational guidance, for example on matters concerning portfolio investors (e.g. pension funds) and their human rights-related responsibilities in relation to investee companies, where the Guiding Principles provide benchmarks on standards for due diligence and corporate governance.

IV. Sustainable development

51. The growing role of business in economic and social development has underscored the need for stronger accountability systems in emerging development frameworks. Two main aspects are worth underlining. First, as part of their duty to protect, States must protect internationally recognized human rights, and the Guiding Principles provide an additional framework for States to ensure that businesses do not undermine development efforts.

52. Second, as part of their corporate responsibility to respect, businesses should avoid infringing human rights and address any adverse impact with which they are involved. In its statement to the United Nations Conference on Sustainable Development, the Working Group pointed out that business contribution to a socially sustainable and equitable development starts with respecting the rights of people affected by their activities—in simple terms, by avoiding infringing on the rights of others and addressing the adverse human rights impacts with which they are involved.[50] Importantly, in the development context, it is clarified in the Guiding Principles that, even though companies may undertake commitments to support and promote human rights, this cannot "offset" possible adverse impacts on rights elsewhere in their operations. Moreover, the corporate responsibility to respect human rights also implies that business should not undermine States' abilities to meet their own human rights obligations, including in their development efforts.

53. The ongoing efforts at the United Nations to establish the post-2015 sustainable development framework provide a major opportunity for better integration of the business and human rights perspective.

A. Post-2015 framework

1. Sustainable development goals

54. Making the private sector in the post-2015 development framework work for human rights has been identified as one of the foremost challenges for the global business and human rights agenda.[51]

55. The increasing acknowledgment of the role business can be playing with regard to driving economic growth and sustainable development has also been reflected in the

[50] Available from www.ohchr.org/Documents/HRBodies/SP/BNUNGuidingPrinciplesBusinessHR.pdf.

[51] See www.ihrb.org/top10/2015.html.

proposed sustainable development goals (A/68/970 and Corr.1) as well as in the synthesis report of the Secretary-General on the post-2015 framework (A/69/700). It is encouraging to note that the draft goals refer explicitly to human rights standards and agreements, and that they include a call to put people at the centre of sustainable development, for a world that is just, equitable and inclusive and that aims to benefit all without distinction of any kind such as age, sex, disability, culture, race, ethnicity, origin, migratory status, religion, economic or other status (see A/68/970 and Corr.1, sect. IV, para. 4). With respect to the role and impact of the private sector, the draft goals call for protection of labour rights and the promotion of safe and secure working environments for all workers, including migrant workers (target 8.8).

56. However, no reference is made in the draft goals to the Guiding Principles and the importance of ensuring protection and respect for all internationally recognized human rights in the context of business operations. Failure to include such a reference in the final goals and supporting documents would constitute a significant lost opportunity to ensure that the acknowledgment of the increased role of the private sector in driving sustainable development is also coupled with the necessary accountability for a greater role and impact.

57. While the need for greater policy and institutional coherence is acknowledged in the draft (targets 17.13-17.15), the wording on the need to achieve greater policy coherence across international frameworks relating to the business sector, ranging from investment to trade frameworks and programmes, should be strengthened in the final goals and efforts to implement them at the country level should be enhanced. Guiding Principles 9 and 10 could provide the necessary guidance with regard to setting a benchmark for greater policy coherence. It is not yet clear how the goals and, more specifically, the targets under each goal, will be adapted to the national level. In line with the outcome of the United Nations Conference on Sustainable Development, it is critical that efforts to tailor global targets to national circumstances be guided by the obligations of States and businesses under international human rights law, as embodied in the Guiding Principles.

58. A major gap is the lack of reference to accountability mechanisms with regard to the potential adverse impacts of business operations and the governance gaps created by globalization, which are a central premise of the Guiding Principles. Accountability should be at the heart of the process, and it should be acknowledged in the sustainable development goals that individuals need to have access to meaningful consultation, in order to voice concerns prior to business operations that may have an impact on their human rights, and to remedy mechanisms, both judicial and non-judicial, when abuses occur.

59. With regard to the accountability of businesses, in Guiding Principle 3 emphasis is placed on the role of corporate governance and the need to ensure that relevant laws and policies not only prohibit but require companies (and company officers such as board directors) to actively consider human rights risks.[52]

60. Another concern is the lack of references in draft sustainable development goal 17, on revitalizing partnerships, to the need to avoid adverse impacts in the context of public-private partnerships. Reiterating the State's duty to foster respect for human rights by businesses through adequate regulation and policies and the minimum expectation that businesses will contribute to the achievement of the sustainable development goals in a way that is consistent with their corporate responsibility to respect human rights, could ground the goal of effective partnerships more firmly in international standards.

[52] For an explanation of these links, see also www.ihrb.org/pdf/submissions/2015-01-12-IHRB-Submission-OECD-Corp-Gov-Principles.pdf.

61. While hundreds of public-private partnerships already exist, as pointed out by the Institute for Human Rights and Business , "we don't yet have solid evidence or even shared views on what good practice looks like and we are still in the early stages of developing effective tools for evaluating the impacts and results of such partnerships across the board".[53] Initiatives such as that pursued by the Institute[54] to assess and report on how partnerships with the private sector could be made more accountable and consistent with the Guiding Principles and international human rights standards in the post-2015 development context should be encouraged.

62. The sustainable development goals should also be strengthened in relation to the critical role of reporting on human rights in the context of sustainability reporting. In draft target 12.6 companies, especially large and transnational companies are encouraged to adopt sustainable practices and to integrate sustainability information into their reporting cycle. As set out in the Guiding Principles, accounting for how they address human rights impacts provides a key measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors. Reporting on human rights impacts and measures in a meaningful way would thus be a significant contribution to enhancing sustainability reporting. Adding human rights considerations alongside the social and environmental is critical. If companies do not report on their potential or actual impacts on the rights of individuals, they could be missing critical social and environmental impacts as well. Thus, adding a reference to the Guiding Principles would contribute to aligning the goals with international standards by promoting meaningful disclosure by companies.[55]

63. The draft goals also address the role of public procurement, calling for public procurement practices that are sustainable, in accordance with national policies and priorities (target 12.7). Here too, the goals and their implementation at the national level should be in line with the Guiding Principles and include the clear expectation that States adopt practices that are not only sustainable but that explicitly integrate human rights considerations.

64. The goals are expected to be adopted in September 2015. The Working Group hopes that the Guiding Principles will be adequately reflected in the final commitments at the global and national levels. Much work remains to be done to solidify and translate the goals into action by States and businesses and to ensure that businesses will contribute to, not undermine, inclusive and sustainable development in the period beyond 2015. The Guiding

[53] www.ihrb.org/commentary/post-2015-agenda-private-sector-priorities.html.

[54] Ibid.

[55] A government-led initiative in this area, supported by UNEP and the Global Reporting Initiative, is the Group of Friends of Paragraph 47 following acknowledgement of the importance of corporate sustainability reporting in paragraph 47 of the outcome document of the United Nations Conference on Sustainable Development. The Guiding Principles are referenced in its frequently asked questions on corporate sustainability reporting, available from www.unep.org/resourceefficiency/Business/SustainableandResponsibleBusiness/CorporateSustainabilityReporting/GroupofFriendsofParagraph47/FAQsonCorporateSustainabilityReporting/tabid/106320/Default.aspx. Another initiative in this context involves the Global Reporting Initiative, the United Nations Global Compact and the World Business Council for Sustainable Development and aims to mobilize the private sector behind the sustainable development goals. It will produce a guide for businesses for assessing impacts and aligning strategies with the goals (https://www.unglobalcompact.org/news/1361-10-07-2014). It would be critical for guidance from such initiatives to emphasize the role of human rights reporting and alignment with ongoing initiatives and tools to support implementation of the Guiding Principles. The recent "UN Guiding Principles Reporting Framework" provides a useful tool.

Principles serve as a framework to guide efforts at the national level in this respect. The Working Group will also dedicate parts of the 2015 Forum on Business and Human Rights, in November, to engage key stakeholders in a dialogue on these issues.

2. Financing for sustainable development

65. The Guiding Principles should also be referred to in the context of the third International Conference on Financing for Development, to be held from 13 to 16 July 2015, which is expected to play a key role in the follow-up to the post-2015 agenda.

66. The zero draft of the outcome document of the above-mentioned conference includes a number of encouraging and important references to the promotion of more responsible business conduct in the overall context of financing for development, including the need for businesses to commit to and apply principles for socially and environmentally responsible investment and business activities; complementary national regulations, including for the protection of labour rights, and environmental and health standards; mandatory integrated reporting for large companies; "coherence checks" on the sustainable development goals by relevant international institutions, private rule-setting bodies and international and national development finance institutions, with a view to aligning their business practices with sustainable development objectives, inter alia through assessments of their impact on the enjoyment of human rights, including indigenous peoples' rights; and progress towards gender equality.

67. While all of these references are welcome contributions to a strengthened international governance framework, the outcome document should be more fully aligned with international standards referencing the Guiding Principles. It should reaffirm the clear benchmarks relating to the State duty to protect human rights in the context of business activities, the business responsibility to respect human rights and the need for affected individuals to have access to effective remedies. There should be scope for doing so, and a suggested policy idea in the "elements" paper for the conference, contained under the heading "strengthening the sustainable development impact of investment", is to implement the Guiding Principles on Business and Human Rights, core labour standards of the International Labour Organization and relevant environmental standards, with enforcement and accountability mechanisms.[56]

68. Further improvements could be made by adopting the considerations outlined above with regard to regulatory action and recommendations regarding corporate reporting.

B. Beyond the post-2015 framework

1. Role of the United Nations Development Programme

69. The United Nations Development Programme (UNDP) has a particularly important role among agencies in the United Nations system in supporting global efforts towards sustainable development, and can play a key role in scaling up action on the Guiding Principles. UNDP has supported implementation of the Guiding Principles in various ways. The Working Group encourages further efforts along at least two strategically important dimensions.

70. First, UNDP is uniquely placed to promote national action plans on business and human rights and support the relevant national authorities and national human rights institutions in initiating an open, inclusive process to develop action-oriented plans by

[56] www.un.org/esa/ffd/wp-content/uploads/2015/01/FFD_Elements-paper_drafting-session.pdf.

Governments to implement the Guiding Principles. This would be a contribution towards better managing the domestic business and human rights-related challenges and fostering dialogue and cooperation between stakeholder groups, including business and civil society. The Working Group's guidance for State national action plans[57] could provide a starting point, as could the emerging experiences of countries in different regions in taking steps towards such plans.[58] Among specific experiences, the role played by UNDP and OHCHR in supporting national action plan processes in Malaysia, Mozambique and the Philippines, with the involvement of the Government, national human rights commissions and civil society organizations, could provide important lessons.

71. Second, as a significant number of governance failures stem from conflict over natural resources where business actors are involved, there may be huge potential benefits from better engagement with the business sector. A key entry point in that regard is the UNDP Extractive Industries for Sustainable Development initiative, through which UNDP supports capacity-building for national governance of extractive industries, including by facilitating and convening dialogues on extraction with affected populations, especially indigenous peoples, the private sector and Governments. Grounding such engagement in the Guiding Principles would provide clarity on the roles and responsibilities of duty-bearers in line with international standards and clear benchmarks for expected action by States and businesses. Emerging tools and resources for companies[59] inter alia[60] provide specific practical guidance which, aligned with the Guiding Principles could help support such engagement.[61]

2. Promoting regional dialogue on the Guiding Principles

72. UNDP has also played an important role in the organization of the regional forums on business and human rights convened by the Working Group to engage stakeholders in various regions with a view to promoting implementation of the Guiding Principles in a manner that is better grounded in local realities: UNDP co-organized the Latin America and the Caribbean Regional Forum, held in Medellin, Colombia, from 28 to 30 August 2013, and supported the African Regional Forum, held in Addis Ababa from 16 to 18 September 2014.[62]

73. As highlighted in the report of the Secretary-General on the contribution of the United Nations system to the advancement of the business and human rights agenda, the Guiding Principles can also contribute to the activities of United Nations regional commissions focused on guidance, capacity-building and technical cooperation on

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[57] See footnote 8.

[58] Ibid.

[59] See for example http://shiftproject.org/sites/default/files/Shift_HRDDinhighriskcircumstances_Mar2015.pdf.

[60] See for example lessons from the "pillars in practice" project referenced in the Working Group's report on the First African Regional Forum on Business and Human Rights (A/HRC/29/28/Add.2).

[61] The paper "Promoting human rights, ensuring social inclusion and avoiding conflict in the extractive sector" prepared by IHRB for UNDP and the Government of Brazil for their joint dialogue on the Extractive Sector and Sustainable Development – Enhancing Public-Private Cooperation in the context of the Post-2015 Agenda", 3–5 December 2014, highlights the value added by the Guiding Principles in the context of preventing conflict in this sector.

[62] See www.ohchr.org/EN/Issues/Business/Forum/Pages/2013LACRegionalForumBusinessandHumanRights.aspx and www.ohchr.org/EN/Issues/Business/Forum/Pages/AfricaRegionalForum.aspx.

economic and social policy involving Member States and other stakeholders in the respective regions (see A/HRC/21/21 and Corr.1, para. 41).

74. A welcome contribution has been the support provided by the Economic Commission for Africa (ECA) in the organization of the above-mentioned African Regional Forum. During the Forum, ECA stated that the Guiding Principles provided a critical reference for a human rights-based approach to development, and that the pursuit of human rights was a social and economic necessity for inclusive and sustainable development and cohesive societies (see A/HRC/29/28/Add.2, para. 13). Other United Nations regional commissions could usefully play similar roles.

75. With regard to the integration of the Guiding Principles in regional development-related initiatives, the aforementioned contribution of ECA to the African Mining Vision through the African Minerals Development Centre provides a good example. The efforts to mainstream human rights and the Guiding Principles in the extractive sector through the design of national mineral policies are encouraging. Creating links with other efforts aimed at promoting development of national action plans on business and human rights could build further synergies and coherence.

3. Engaging small and medium-sized enterprises

76. While small and medium-sized enterprises make up the vast majority of the world's companies, they have been given considerably less attention in the global business and human rights debate, in spite of the fact that such enterprises could affect human rights in the same way as transnational corporations do and are less often subject to the same level of scrutiny.

77. The United Nations Industrial Development Organization (UNIDO) could play an important role in supporting outreach to small and medium-sized enterprises. A starting point would be to embed the Guiding Principles across its work, especially in the context of its corporate social responsibility programme (but not only).[63] The work of UNCTAD on global value chains provides yet another entry point. Existing tools and research could provide useful resources for aligning such support and engagement with the Guiding Principles.[64]

78. Another highly complex challenge, also relevant in the discussion on linking the development and business and human rights agenda, is to promote protection and respect for human rights in the informal sector. This was identified as a key issue in discussions at the African Regional Forum, one that needs to be discussed further among all stakeholders.

V. United Nations partnerships with the private sector

79. Some final observations relate to the important role of United Nations platforms for partnerships with private sector that already support the dissemination of the Guiding Principles.

80. The contributions of the Global Compact and the UNEP Finance Initiative are especially critical for addressing the strategic challenges set out below.

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[63] www.unido.org/csr.html.

[64] In particular the European Commission's guidance for SMEs on the Guiding Principles, "My business and human rights", which provides an introduction to the field in simple language. See also the IHRB State of Play report (see footnote 41).

A. Insufficient awareness of human rights responsibilities in the global business community

81. The majority of the world's enterprises have not heard about the Guiding Principles, which is one of the principal challenges to lasting progress. Through its global reach, with over 8,000 company members, a growing participant base and connections with local businesses through 85 local networks, the Global Compact is already making a laudable contribution to raising awareness of the Guiding Principles.[65] Sixty-four per cent of its participants have indicated that they are aware of the Guiding Principles,[66] which is a promising basis for achieving even greater awareness.

82. While smaller in size, the UNEP Finance Initiative is also strategically positioned to contribute to closing the awareness gap, given that among its some 230 members are some of the world's major financial institutions and given the potential catalytic role of the financial sector. One option could be to embed the Guiding Principles in all the activities of the Initiative rather than confining human rights to a subtopic under social issues. For example, as already mentioned there is a strong case for building on guidance on corporate human rights reporting aligned with the Guiding Principles, including in the context of finance.

83. The roles of both the Global Compact and the UNEP Finance Initiative in promoting the Guiding Principles could be further strengthened through improved coordinated action across relevant agencies and entities in the United Nations system to reinforce the awareness-raising efforts already undertaken by OHCHR and the Global Compact.

B. Lack of capacity and understanding to grapple with the implications of the Guiding Principles

84. A lack of capacity and understanding to grapple with the implications of the Guiding Principles is cited as one of the most common challenges and one reason why uptake of the Principles has not been quicker.[67] An important role of the Global Compact is to continue to collaborate with OHCHR to develop and disseminate guidance on how to implement the corporate responsibility to respect human rights in practice, both on general aspects and in relation to thematic issues.[68] Global Compact initiatives with other United Nations agencies on women's empowerment (with the United Nations Entity for Gender Equality and the Empowerment of Women), children's rights (with the United Nations Children's Fund) and indigenous peoples' rights have helped to raise the awareness of business as to how to

[65] Constructive ways for local networks to support uptake of the Guiding Principles include supporting national-level processes to develop national action plans and working with national human rights institutions. Seehttps://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GCLN_National_Action_Plan_Guidance.pdf and https://www.unglobalcompact.org/resources/891.

[66] See United Nations Global Compact, Global corporate sustainability rep[illegible] (2013), available from **Error! Hyperlink reference not valid.**

[67] This is the case even among companies supportive of human rights. See for example www.economistinsights.com/business-strategy/analysis/road-principles-practice.

[68] The United Nations Global Compact tools and resources database provides a key portal with guidance for business, available from https://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html. See also Summary document: some key business and human rights guidance materials and how to use them, available from https://www.unglobalcompact.org/resources/341.

respect and support the rights of these groups.[69] In addition to producing and promoting guidance on key elements of the Guiding Principles, the Global Compact has addressed issues such as the role companies can play in respecting the rights of the lesbian, gay, bisexual and transgender community, business efforts to support the rights of older persons and the role of business in addressing the adverse human rights impacts of climate change. It also undertakes training for business representatives at the local level through its local networks, at the global level through interactive online webinars and through capacity-building events at key business and human rights conferences, such as the annual Forum on Business and Human Rights and the African Regional Forum in 2014. With its potential for reaching a wide business audience globally, it would seem obvious that strengthened resources for the Global Compact specifically to promote the Guiding Principles could deliver significant progress.

85. The "UN Guiding Principles reporting framework" provides a useful reference to help businesses understand the practical implications of the corporate responsibility to respect human rights and for Global Compact participant companies to report on progress on the first six principles (covering human and labour rights).

86. The UNEP Finance Initiative also plays a critical role in enhancing understanding by business of human rights in the context of finance and in alignment with the Guiding Principles. Its guidance tool on human rights,[70] which is designed as an online signposting tool providing information on human rights risks for financial institutions, offers a platform for learning and sharing information. It should be regularly updated in order to reflect the rapid developments in this field and align with emerging tools and initiatives, such as the "UN Guiding Principles reporting framework". In addition, the Initiative works to better understand the current landscape of human rights expectations in the context of banking through an analysis of soft and hard law.[71] Both of these projects led by the Initiative contribute to clarifying the implications of the Guiding Principles for the financial sector. However, as is the case with the Global Compact's human rights work, fulfilling more of the potential impact of this work remains highly dependent on the availability of resources.

87. In addition, engagement with other partnership initiatives involving the United Nations to promote responsible business practices is vital. For example, initiatives such as the Principles for Responsible Investment, the Principles for Responsible Management Education and the Sustainable Stock Exchanges Initiative should be firmly aligned with the Guiding Principles across their activities and take into account relevant emerging tools and initiatives to further support wider uptake of the Guiding Principles.

VI. Conclusions and recommendations

88. **Since their endorsement in 2011, there has been progress in convergence around the Guiding Principles in policy and tool development among major stakeholder groups. However, gaps remain both in terms of translating policy commitments into better protection of human rights on the ground and policy coherence in relevant global governance frameworks. In particular, there is potential throughout the United Nations for more robust integration of the Guiding Principles. Examples of existing efforts as well as key opportunities to embed the Guiding**

[69] See www.weprinciples.org, www.childrenandbusiness.org and https://www.unglobalcompact.org/Issues/human_rights/indigenous_peoples_rights.html.

[70] Available from www.unepfi.org/humanrightstoolkit/.

[71] www.unepfi.org/work-streams/social-issues/.

Principles in United Nations work and processes have been highlighted in the present report. These opportunities to align with, and support implementation of, the Guiding Principles have potential for spurring uptake on a larger scale and contributing to greater overall coherence in global governance frameworks that directly or indirectly relate to the Guiding Principles. This would also be a significant contribution to a more accountable and inclusive post-2015 development framework. States and United Nations entities are thus encouraged to act on the opportunities highlighted in the present report.

89. Although the scope of the report does not enable the Working Group to examine other areas, such as peace and security and humanitarian action, where the Guiding Principles would be of similar relevance, these areas should also be subject to further analysis and engagement. Similarly, there is a need to better delineate roles, responsibilities and appropriate accountability systems for both States and business enterprises with regard to specific issues, such as water and sanitation, agricultural investment, supply chains and child and forced labour, tax avoidance, corruption and climate justice.

90. A major challenge is that of achieving policy coherence between States' conduct in multilateral institutions that deal with business- and development-related issues and their international human rights obligations. This is especially relevant in the context of State-driven processes at the United Nations, including the negotiations on the post-2015 development agenda. In Guiding Principle 10 the need is stressed for States to draw on the Guiding Principles to promote a shared understanding and advance international cooperation to promote respect by business for human rights and help States meet their duty to protect against human rights abuses by business enterprises.

91. The Human Rights Council, in its resolution 26/22, encouraged States to submit information on their national action plans and other relevant initiatives on business and human rights, with annual reports on the implementation of such commitments, and invited all relevant stakeholders to submit relevant information to the Working Group. The Working Group would like to receive such information from States and other stakeholders, including in relation to policy coherence. That information would inform discussions and lesson-sharing, including at the 2015 Forum on Business and Human Rights. The present report is part of the Working Group's effort to enhance cooperation and dialogue with certain key actors, as mandated by Council resolutions 17/4 and 26/22. In that regard, the Working Group would like to highlight its desire to pursue efforts towards more comprehensive and systematic data collection and analysis of progress and challenges, including in the areas emphasized in the report. It looks forward to pursuing a dialogue with relevant organizations, in order to contribute to more coherent approaches in global governance and ultimately to improve human rights outcomes at the global and national levels in support of sustainable development.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Addendum

Visit to Azerbaijan* **

Summary

In the present report, submitted pursuant to Human Rights Council resolution 26/22, the Working Group on the issue of human rights and transnational corporations and other business enterprises describes its findings during its visit to Azerbaijan from 18 to 27 August 2014. During its visit, the Working Group focused on efforts by the Government and companies operating in the country to prevent, protect against and redress human rights abuses by business enterprises, in conformity with the Guiding Principles on Business and Human Rights. The Working Group makes observations about the general context and the legislative and policy framework (chaps. II and III) and the level of awareness about business and human rights and the framework set out in the Guiding Principles (chap. IV). It then highlights a number of issues of particular importance in the national context, namely, the space for participation of civil society; efforts to tackle corruption and abuse of public positions; the oil and gas sector and the construction industry; and labour rights (chap. V). The Working Group also makes observations on access to remedy, the third pillar of the Guiding Principles (chap. VI) and on ways forward to strengthen the national policy framework (chap. VII). The Working Group concludes the report with specific recommendations for further action.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex, is circulated in the language of submission only.

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Annex

[English only]

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Azerbaijan (18 – 27 August 2014)

Contents

		Paragraphs	*Page*
I.	Introduction	1 – 5	3
II.	General context	6 – 12	3
III.	Legislative and policy framework	13 – 17	5
IV.	Awareness of business and human rights	18 – 30	6
V.	Issues in specific contexts	31 – 79	8
	A. Inclusiveness and participation	31 – 45	8
	B. Tackling corruption and ensuring accountability	46 – 52	11
	C. Oil and gas sector	53 – 65	12
	D. Construction industry	66 – 70	14
	E. Labour rights	71 – 79	15
VI.	Access to remedy	80 – 86	17
	A. State-based judicial mechanisms	80 – 82	17
	B. State-based non-judicial grievance mechanisms	83 – 85	18
	C. Non-State-based grievance mechanisms	86	18
VII.	Strengthening the policy framework	87 – 89	18
VIII.	Conclusions and recommendations	90 – 98	19

I. Introduction

1. At the invitation of the Government of Azerbaijan, two members of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Puvan Selvanathan and Pavel Sulyandziga, visited, pursuant to Human Rights Council resolutions 17/4 and 26/22, the State from 18 to 27 August 2014. The objective of the visit was to assess efforts to prevent and address the adverse human rights impact of business-related activities in accordance with the Guiding Principles on Business and Human Rights.

2. The experts met with government authorities from the Ministries of Foreign Affairs, Internal Affairs, Justice, Labour and Social Protection, Economy and Industry, and Energy. In addition, it held meetings with representatives of the Supreme Court, the State Committee for Family, Women and Children's Affairs, the State Agency on Procurement, the State Town Building and Architecture Committee, the State Agency for Public Service and Social Innovations of the President of the Republic of Azerbaijan, the State Oil Fund, and the State Committee for Property Affairs. In addition, they met with members of Parliament, and representatives of the Office of the Commissioner for Human Rights (Ombudsman), the Institute of Human Rights, the Azerbaijan Trade Union Confederation, and the Azerbaijan Republic Chamber of Commerce, as well as with representatives of a range of local and international business enterprises, civil society organizations, the media, the diplomatic community, and United Nations agencies in Azerbaijan. The experts travelled to Ganja, the second-largest city, where they met with local public authorities and representatives of civil society and businesses, including workers and managers.

3. The Working Group focused, in particular, on the extractive industries, including the oil and gas sectors and the aluminium-producing industry. It also examined labour issues, corruption and the rights and needs of individuals from groups or populations in a vulnerable situation, as well as the administration of access to remedy, the registration of non-governmental organizations and the situation facing human rights defenders and independent media.

4. The Working Group is grateful to the Government of Azerbaijan for its invitation and for its assistance before, during and after the visit to the State. It also thanks the organizations, businesses and individuals with whom it met during its visit, and who facilitated site visits and meetings with relevant stakeholders. It appreciated the open and constructive discussions on the progress and challenges in the protection of human rights in the context of business activities.

5. In the present report, the Working Group describes its findings and makes recommendations for actions that may assist in addressing and remedying the challenges identified.

II. General context

6. Azerbaijan gained independence from the Soviet Union in 1991. It has an estimated population of 9.7 million. Situated at the crossroads between Eastern Europe and Western Asia, the country is divided into 66 districts, 77 cities and 13 urban districts. Since 2003, Azerbaijan has been led by President Ilham Aliyev. The country's first Parliament, the *Milli Majlis*, was elected in 1995 and consists of 125 deputies. The judiciary is structured as a three-tiered court system that consists of trial courts of general and special jurisdiction, appellate courts, the Supreme Court and the Constitutional Court.

7. An unresolved armed conflict in and around the Nagorno-Karabakh region of Azerbaijan has resulted in more than 600,000 internally displaced persons today and

thousands more refugees.[1] A ceasefire signed in 1994 remains fragile, with reports of sporadic violations. Some of the interlocutors with whom the Working Group met described the situation as a "frozen conflict"; when discussing business and human rights, interlocutors repeatedly raised the issue of internally displaced persons as one of the main human rights issues affecting the country.

8. Azerbaijan has experienced a period of sustained economic growth over the past decades, driven by increasing revenues from oil and gas. Overall private companies, including international corporations, play an increasing role in the economy, following a policy of privatization of State-owned enterprises since the country's independence in 1991.

9. Oil and gas have always been the mainstay of the State's economy. According to information provided by the Government, in 2014, the oil and gas sector accounted for 39 per cent of GDP; oil, oil products, natural gas and electricity made up 92 per cent of exports, and the oil sector made up 65 per cent of State budget revenues. The main actor in the sector is the State-owned oil company SOCAR, which works in partnership with several international oil and gas companies. In recent years, the Government has sought to diversify the economy to ease the country's dependence on hydrocarbon revenues, a sector that, despite its economic significance, accounts for less than 1 per cent of total employment.[2] Azerbaijan has witnessed a construction boom in the past decade, mainly since the Government embarked on a programme of urban renewal largely in the capital city, Baku. Other significant industries include telecommunications, agriculture, manufacturing and the service sectors, particularly wholesale and retail trade, and hotels and restaurants services.

10. High economic growth in the 2000s saw the Government initiate large public sector investment programmes and policies to expand social assistance (such as social protection transfers to the population) and to increase wages. This helped to substantially reduce poverty and improve the distribution of wealth. There was a steep decline in poverty rates from 46.7 per cent in 2002 to 8.4 per cent in 2011;[3] the World Bank estimated that poverty stood at 6 per cent of the population in 2012.[4] The average monthly nominal wage of workers increased from 44.3 Azerbaijani manats (AZN) in 2000 to 444.3 AZN in 2014.

11. The proportion of low-wage earners has, however, increased since 2000, reaching 40 per cent of the population in 2010.[5] Inequality remains high, especially in urban areas and between genders. The 2008 Living Standards Measurement Survey showed the country-wide Gini coefficient to be 31, with inequality in cities higher at 32.8 and lower in rural areas at 27.1.[6] Azerbaijan ranked 62 out of 149 countries in the 2013 UNDP Gender Inequality Index. Women's average wages are less than half those of men (56.8 per cent in 2009 – a steady increase since data were first collected in 2003), despite the fact that women make up almost half of the labour force. The labour market is also heavily gender segregated, even though the educational qualifications of women and men are almost equivalent. Women tend to work in low-wage sectors and do not move far up the pay

[1] Submission of the Office of the United Nations High Commissioner for Refugees for the compilation report of the Office of the United Nations High Commissioner for Human Rights for the review of Azerbaijan during the sixteenth session of the universal periodic review.

[2] World Bank, Azerbaijan Partnership Program Snapshot, April 2015.

[3] United Nations Development Programme (UNDP), "About Azerbaijan" (available at www.az.undp.org/).

[4] World Bank, data on Azerbaijan (available at http://data.worldbank.org/country/azerbaijan).

[5] International Labour Organization (ILO), Decent Work Country Profile: Azerbaijan, 2012.

[6] World Bank, Azerbaijan Partnership Program Snapshot (see footnote 2).

ladder. The proportion of women in executive positions has stagnated at around 10 per cent over the past decade.[7]

12. According to data provided by the Government, unemployment has steadily declined over the past decade, from 9.2 per cent in 2013 to 4.9 per cent in 2014. Its recent decrease (of 0.3 per cent between 2012 and 2013) was due to job creation in the non-tradable sectors, such as construction, hotels and restaurants, and in retail trade. Youth unemployment and informal employment continue, however, to pose a challenge. The country has a young population: 40 per cent are younger than 24 years of age. Important advances have, however, been made to address youth unemployment, which dropped to 29 per cent in 2012 from 42 per cent in 1999.[8] The share of people working without formal labour contracts has stood consistently at 67 per cent in recent years, a problem that particularly affects women and workers in regions outside Baku.[9]

III. Legislative and policy framework

13. Azerbaijan has signed all nine of the core international human rights treaties and has ratified or acceded to eight of them.[10] It has also signed, and in some cases ratified, all Optional Protocols, with the exception of two.[11] In addition, Azerbaijan has ratified all eight core conventions of the International Labour Organization (ILO) that cover four categories of principles and rights: freedom of association and the right to collective bargaining; the elimination of forced labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. It has also ratified 44 of the 177 ILO technical conventions and four ILO governance conventions relating to labour inspection, employment policy and tripartite consultations.

14. The country has a monist legal system. The Constitution,[12] adopted by referendum in 1995, states that international agreements undertaken by Azerbaijan (including international human rights treaties) constitute an integral part of the legislative system (art. 148, II). According to article 151, whenever there is disagreement between international agreements and treaties and domestic normative-legal acts (except the Constitution and acts accepted by referendum), the provisions of international agreements take precedence.

15. The Constitution protects a range of human rights, including the right to life (art. 27), equality before the law and prohibition of discrimination on the basis of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership of political parties, trade unions and other public organizations (art. 25). In addition, the Constitution stipulates that nobody may be subject to torture or degrading treatment or punishment (art. 46), and protects the rights to property, freedom of thought and speech, and a healthy environment. It also provides protections for workers (art. 35) and the right of workers to establish and join trade unions (art. 58). The Constitution grants citizens the right to appeal decisions and allows them to criticize the

[7] ILO, Decent Work Country Profile (see footnote 5).

[8] Ibid.

[9] World Bank, "Azerbaijan Partnership Program Snapshot" (see footnote 2).

[10] Azerbaijan is yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, which it signed in 2007.

[11] Azerbaijan has signed but not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. It has also neither signed nor ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

[12] Constitution of the Republic of Azerbaijan, available at http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf.

activity or work of State bodies, their officials, political parties, trade unions or other public organizations, and also the activity or work of individuals (art. 57).

16. The Government has a number of key policy documents that focus on human rights and broader social and economic issues. In December 2011, a presidential decree approved a national programme of action to improve the protection of human rights and freedoms in the Republic of Azerbaijan. The programme document comprises five chapters, focusing on improvement of the regulatory and legal framework; the protection of the rights of various population groups; improving the activity of government agencies; educational, scientific, analytical and awareness-raising activities in the area of human rights; and cooperation with international organizations in the field of human rights.

17. The "Azerbaijan 2020: Look into the Future" development concept,[13] approved by presidential degree in December 2012, was designed to address current social and economic challenges. Its main policy objectives include (a) to diversify the economy to reduce dependence on oil and gas through the development of human capital to lay the foundation for a transition to a knowledge-based economy; (b) to develop the social sphere by improving the general welfare of the population, including through facilitated access to quality education, health care and social security systems, improved labour conditions and the creation of equal opportunities for women; and (c) to deepen democracy by improving the business environment and ensuring human rights and freedoms and the active status of civil society in public life.

IV. Awareness of business and human rights

18. The meetings held by the Working Group with representatives of key stakeholders, including of the Government, business enterprises and civil society revealed that, in general, awareness of business and human rights issues and of the Guiding Principles on Business and Human Rights was limited. At the same time, there are also indications of progress and an increasing recognition of the importance of the business and human rights agenda.

19. Scant reference was made during meetings held by the Working Group to any relationship between business activities and human rights beyond the protection of workers' rights. In the Working Group's dialogue with representatives of business, the latter sought advice on how human rights considerations might inform their activities given that there was a clear need for further guidance and assistance to business in this area.

20. The Working Group recognizes that business may be less familiar with human rights issues than Governments and civil society, and that it may face challenges in integrating and interpreting human rights within corporate systems and decision-making processes. The recent establishment of a United Nations Global Compact Local Network shows that some business enterprises are beginning to take human rights-related issues into consideration. The Local Network, together with business associations, could play an important role in raising awareness about and demystifying human rights among their members.

21. The Office of the Commissioner for Human Rights (Ombudsman) is another example of new attention being given to business and human rights issues. Since its 2014 edition, the annual reports of the Ombudsman include a section on "business and human rights" containing descriptions of activities undertaken in this area, including discussions with relevant government authorities, national confederations of trade unions and

[13] See www.president.az/files/future_en.pdf.

employers, and civil society organizations. Also, in 2013, the Ombudsman facilitated the establishment of a working group composed of relevant State bodies and non-governmental organizations. At the initiative of the Office, the Guiding Principles on Business and Human Rights have been translated into the Azerbaijani language and distributed to the members of the Working Group and to civil society organizations. The Working Group welcomes these and other such initiatives, which provide a clear opportunity for raising awareness and the inclusion of the human rights agenda in national development.

22. In general, when the Working Group asked questions about the country's most salient business and human rights issues, the public authorities met during the mission typically mentioned two areas: (a) the situation facing internally displaced persons and refugees as a consequence of the armed conflict in and around the Nagorno-Karabakh region of Azerbaijan; and (b) the "right of entrepreneurs" to start and develop a business in the country.

23. The Working Group acknowledges that, in the national context, the above-mentioned issues are highly important ones. At the same time, it is important to note that these issues are not central to the framework set out in the Guiding Principle focused on the obligation of the State and the responsibility of business enterprises to prevent and protect against business-related abuse of human rights.

24. Company programmes o assist internally displaced persons were mentioned as examples of corporate social responsibility, not of how companies implemented their responsibility to protect human rights throughout their operations.

25. The concept of the "right of entrepreneurs" is set out in a specific law, backed also by policies such as the "National Fund for Entrepreneurship Support"[14] and is referred to in the Azerbaijan 2020 development concept (see para. 17 above). The Constitution of Azerbaijan also enshrines the "right for business activity", stating that "everyone may, using his/her possibilities, abilities and property, according to existing legislation, individually or together with other citizens, carry out business activity or other kinds of economic activity not prohibited by the law" (art. 59). Likewise, the national programme of action to improve the protection of human rights and freedoms refers to "strengthening the rights of entrepreneurs".

26. The Working Group appreciates the importance of protecting entrepreneurs and small businesses against abuse. In particular, it was reported that those who start up a business face obstacles relating to "red tape" and corruption, such as arbitrary exclusion from bidding processes in public procurement. The Guiding Principles and the mandate of the Working Group do not, however, focus on the human rights abuses faced by enterprises, but rather on the abuses caused by their activities.

27. On the basis of its observations, the Working Group concludes that much awareness-raising and capacity-building are needed to ensure that all stakeholders understand the respective duties and responsibilities of States and business enterprises to tackle human rights risks related to business activities.

28. The Working Group notes that the Azerbaijan 2020 development concept includes the objective of developing "a strategy and State programme on corporate responsibility". This objective could offer an important opportunity to raise awareness about how the international human rights framework provides specific guidance on the corporate responsibility of business enterprises.

[14] See http://anfes.gov.az/en.

29. The State's steady economic growth and diversification poses both opportunities and challenges related to the impact of business on human rights. As previously noted by the Working Group, all countries, particularly those undergoing economic development, need to maximize the positive effects of business (including economic development, building infrastructure and employment) while minimizing negative impact (such as damage to the environment, the violation of labour rights, and reduced access to economic, social and cultural rights) (A/HRC/23/32/Add.1, para. 4). With its changing economy, the State's institutions will come under pressure to keep up with effectively preventing and addressing human rights risks. A national plan of action for the implementation of the Guiding Principles could help the Government of Azerbaijan to identify areas of particular risk, thereby allowing it to prioritize the strengthening of laws, regulations, policies and oversight of human rights protection.

30. At the same time, the business enterprises operating in Azerbaijan, both foreign and local, also have an independent responsibility to respect human rights. This responsibility is a global standard of expected conduct for all businesses wherever they operate, regardless of the State's abilities and/or willingness to fulfil its own human rights obligations. To avoid infringing on the human rights of others, the Guiding Principles state that business enterprises should institute a policy commitment to meet their responsibility to respect human rights; undertake ongoing human rights due diligence to identify, prevent, mitigate and account for their human rights impact; and have in place processes to enable remediation for any adverse human rights impact that they cause or to which they contribute.

V. Issues in specific contexts

A. Inclusiveness and participation

31. Multi-stakeholder approaches involving the Government, business and civil society organizations are particularly important in the area of business and human rights. Such inclusive approaches allow for interests to be balanced and the formulation of well-informed policies that respond more effectively to the needs and concerns of both businesses and those whose rights may be affected by business activities. In this respect, an independent civil society and the media play an important role in promoting transparency and accountability in business operations, particularly where human rights concerns may arise. An active civil society engaged in these issues is also essential in advocating for progress and in the monitoring of implementation of the Guiding Principles by the Government and all business enterprises.

32. The Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in the identification of potential adverse business-related human rights impact, while Principle 26 underlines how States, in order to ensure access to remedy, should ensure that the legitimate activities of human rights defenders are not obstructed.

1. Space for civil society participation

33. The Working Group welcomes the Government's policy commitments in the Azerbaijan 2020 development concept to enhanced cooperation between the Government and civil society organizations by means of a national plan of action for the development of civil society. The Government's stated objectives include the adoption of legislation that (a) stimulates a conducive environment and financial support for civil society; (b) leads to the

creation of "non-governmental organization houses" and education centres; and (c) increases civil society participation in the development of State programmes and public commissions. The Development Concept also underlines the importance of greater inclusion of civil society in policymaking and in promoting freedom of speech and information, including by improving the regulation of information and mass media in compliance with international standards.

34. At the same time, the Working Group noted with concern signs that the space for independent civil society appears to be contracting. In this regard, it regrets that it was unable to engage with some civil society actors who had been placed in pretrial detention in the weeks and months prior to the mission. The arrest of a number of prominent civil society actors was brought to the direct attention of the Working Group as a human rights mechanism within the United Nations and because of its scheduled visit to Azerbaijan. The experts had arranged to meet with a number of the said civil society actors prior to their arrest to discuss the situation of business and human rights in Azerbaijan.

35. The Working Group received reports that civil society organizations, human rights defenders, journalists and civic and political activists had suffered harassment, intimidation or arrest. It also notes that the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association issued a statement on 19 August 2014 in which they condemned the growing tendency to prosecute prominent human rights defenders in Azerbaijan.[15] Similar observations were made by the Commissioner for Human Rights of the Council of Europe after a two-day visit to the country in October 2014.[16]

36. In its dialogue with the Government, when the Working Group raised the issue of the recent arrests of prominent civil society actors, it was informed that the Government was in the process of setting up a working group to look into the matter. It was subsequently informed that a joint working group on human rights issues, including representatives of State bodies and non-governmental human rights organizations (which had previously operated from 2005 to 2008), had been restored in October 2014 on the initiative of the head of State and the Secretary-General of the Council of Europe.

37. The Working Group heard first-hand accounts of how several civil society organizations working on human rights issues faced increasing difficulties with registration and had had their bank accounts frozen; consequently some organizations had to cease their activities. From the information received, the grounds for freezing bank accounts derived from recent amendments to the law on non-governmental organizations (public associations and foundations), the law on grants, and requirements for registration of grants with the Ministry of Justice.

38. From the meetings held with a broad range of civil society organizations, the Working Group noted generally that organizations supported by funding from non-governmental sources, such as grants from international organizations, were evidently more affected by these new administrative requirements than organizations supported by the Government.

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[15] OHCHR, "Persecution of rights activists must stop – UN experts call on the Government of Azerbaijan", press release, 19 August 2014.

[16] Council of Europe, "Azerbaijan: Stop reprisals against human rights defenders", press release, 24 October 2014. See also Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights: Application No. 81553/12, *Hilal Mammadov v. Azerbaijan*, CommDH(2015)5, 19 February 2015.

39. During its visit, the Working Group encouraged the Government to proceed with measures to simplify grant registrations. It urged the Government to ensure that the legitimate activities of human rights defenders are not obstructed and that procedures pertaining to the process of registration and approval of grants are transparent, avoid any perception of bias and are conducted in an efficient and timely manner. The Government informed the Working Group that work was being carried out to improve regulations regarding the registration of grants.

40. The Working Group also met with investigative journalists who explained how they had been subjected to harassment and intimidation as a result of their work to expose corrupt business practices. It has been reported that, since the visit of the Working Group, one of the said journalists was arrested and is being held in pretrial detention. The Working Group is deeply concerned that actions such as these may interpreted as reprisals against individuals working to expose corruption by a privileged few, thereby undermining the broader agenda for development.

2. Extractive Industries Transparency Initiative

41. The difficulties faced by independent civil society organizations are reflected in concerns about the State's compliance with its commitments made under the *Extractive Industries Transparency Initiative*.

42. Azerbaijan is a founding and governing board member of the EITI, an international coalition of Governments, companies and non-governmental groups that promotes government openness in natural resources management. The EITI collects and publishes data on government revenues from oil, gas and mining with the objective of fostering open public debate about how revenues are used. A key EITI requirement is "effective multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the government, companies, and the full, independent, active and effective participation of civil society."

43. The discussions held by the Working Group with representatives of the civil society mechanism of the EITI strengthened the impression that its process is a greatly valued opportunity to engage in direct dialogue with the Government and the representatives of the oil and gas sector. The Working Group was informed that some member organizations were currently unable to function or contribute to the EITI given that their bank accounts had been frozen. Despite these difficulties, those with whom the Working Group met disagreed with calls made by some international human rights organizations that the EITI should suspend Azerbaijan's membership because of its restrictive new laws regulating non-governmental organizations.[17]

44. The Working Group notes that concerns over the State's treatment of civil society organization had led the EITI to send a mission to Azerbaijan in September 2014 to examine the extent to which civil society representatives could play their role in it. Following the mission and a meeting of the EITI International Board in Myanmar in October 2014, the Board adopted a decision on Azerbaijan in which it, inter alia, called upon the Government to ensure that civil society representatives substantively involved in the EITI process are able to "freely access and use funding to carry out their activities" and "speak freely about the EITI process and express views on natural resource governance without fear or threat of reprisal or harassment".[18] The Board agreed that progress on these actions would be assessed through an early validation (by an external, independent

[17] Human Rights Watch, "Azerbaijan: Transparency Group Should Suspend Membership", news release, 14 August 2014.

[18] EITI, 28th EITI Board Meeting, Naypyitaw, 14-15 October 2014, minutes.

evaluation mechanism) to begin on 1 January and completed early in February 2015. Based on the validation, the Board would decide whether Azerbaijan could keep its current status as EITI-compliant, should be downgraded to "candidate" or, in the case that no meaningful progress had been made with EITI implementation, be delisted.

45. The Working Group encourages the Government to work with its partners in the EITI as well as in the United Nations system and the Council of Europe to ensure that independent civil society actors are not obstructed in their work and are able to contribute to well-informed policymaking. While the Government's stated policy objective of greater inclusion of civil society in policymaking is commendable, a basic condition for the success of such a policy is ensuring that civil society actors are able to operate freely.

B. Tackling corruption and ensuring accountability

46. As underlined in Guiding Principle 1, States must project against human rights abuse by third parties, including business enterprises, through appropriate steps to prevent, investigate, punish and redress such abuse. An important aspect of this State obligation is to protect the rule of law and to ensure adequate accountability.

47. As also evidenced by the emphasis given to the "rights of entrepreneurs" in various policy documents, the effort to combat corruption is high on the political agenda. The Azerbaijan 2020 development concept highlights the need to scale up the fight against corruption. The Government has taken a set of measures to combat corruption and abuse of public positions. In 2004, it adopted the Law on Combating Corruption and established the Commission on Combatting Corruption; in 2005, it ratified the United Nations Convention against Corruption. The second national anti-corruption plan (2012-2015), endorsed by presidential decree of 4 September 2012, also includes new provisions to improve the protection of whistle-blowers in corruption-related cases and to limit the immunity of judges accused of corruption. Also, one of the aims of the Azerbaijan Service and Assessment Network (ASAN), established in 2012, is to reduce petty corruption across the public administration by providing citizens with access to a range of public and private services through dedicated service centres and mobile buses.

48. According to information received, corruption is linked to monopolies and a lack of transparency in certain sectors of the economy. In some cases, there have also been irregularities in public bidding processes. Transparency International ranked Azerbaijan 126th out of 175 countries on its 2014 Corruption Perceptions Index.

49. The Working Group notes that a wide range of measures are envisaged under the second national anti-corruption plan (2012-2015), including action to improve the labour and social service administration, to prevent illegal employment and provide persons working in the shadow economy with social rights (sect. 25.1); performance studies on the problems faced by entrepreneurs in their relations with State institutions (sect. 12.1); the establishment of web-based resources and telephone services for receiving information on illegal inspections of entrepreneurial activity, and preparation of proposals for inspecting bodies and inspectors for illegal inspections (sects. 12.3-12.4); and the development of mechanisms for restricting participation in public procurement of natural and legal persons owing to previous violations of competition and execution of transactions on public procurement (sect. 14.3).

50. The Working Group appreciated the frank dialogue held with the State Procurement Agency about efforts under way to address the challenges faced, in particular with regard to transparency. For example, the Agency has commenced publishing the results of public tenders on its website and was in the process of developing guidelines on procurement policy, informed by the United Nations Commission on International Trade Law

(UNCITRAL) Model Law on Public Procurement. The Working Group underlines the importance of States using commercial transactions with business enterprises to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, as prescribed in Guiding Principle 6. Developing guidelines for public procurement offer an ideal opportunity to do so. As also described in the Guide to Enactment of the UNCITRAL Model Law on Public Procurement,[19] the concept of sustainable procurement allows for States to impose international labour law and human rights standards.

51. The Working Group notes that, pursuant to the amendments to the Law on the Right to Obtain Information, passed in 2012, together with amendments to the State Law on Registration of Legal Entities and the Law on Commercial Secrets, business enterprises are not required to make public information about their registration, ownership or structure. Accordingly, several stakeholders from independent media and civil society organizations alerted the experts to the difficulty of properly identifying certain businesses and their owners in order to monitor compliance with national and international law. While the Working Group understands the value of privacy in business, it believes that an open registry of fundamental corporate information may foster more responsible business actors and boost investor confidence across all sectors.

52. The Working Group took note of recent reports alleging a lack of transparency and apparent irregularities in the trading of oil. Notably, a report issued in 2013 noted a lack of information on the ownership of private companies partnered with SOCAR and on bidding processes or public tenders.[20] The Working Group also noted that an ongoing EITI pilot programme aims to make the disclosure of beneficial ownership of companies operating, investing or bidding on extractive assets mandatory in 2016. The Working Group is of the view that such measures of transparency might help to address suspicion and perceptions of corruption and abuse of position by private companies and public authorities.

C. Oil and gas sector

53. The Working Group held a number of meetings that concern the State's extractive industries, notably the dominant oil and gas sectors and others, such as the aluminium industry. Besides meeting with representatives of the Ministry of Energy, the State Oil Fund (SOFAZ) and the State Oil Company of Azerbaijan Republic (SOCAR), the experts consulted with transnational oil and gas corporations operating in Azerbaijan, including BP (headquartered in the United Kingdom), Statoil (headquartered in Norway) and Total (headquartered in France). In addition, the Working Group visited a domestically owned and run aluminium factory in Ganja, where it discussed environmental issues with the manager and witnessed the factory's labour standards.

54. SOCAR is the main national company involved in the extraction of oil and gas in Azerbaijan. It is entirely State-owned and controlled. As underlined in Guiding Principle 4, States are expected to take additional steps to protect human rights abuses by business enterprises owned or controlled by the State.

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[19] Available at www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2012Guide.html.

[20] Global Witness, *Azerbaijan Anonymous: Azerbaijan's state oil company and why the extractive industries transparency initiative needs to go further*, December 2013. In its public response, SOCAR refuted the information provided in the report by Global Witness as biased and based on inaccurate data, see News.Az, "SOCAR issues statement on report 'Azerbaijan Anonymous' by Global Witness", 14 December 2013.

55. In meetings with SOCAR officials, the Working Group noted the poor degree of understanding of the company's human rights responsibilities, particularly when measured against the Guiding Princi[illegible]. Although officials referred to a number of social responsibility projects, such as a number of SOCAR-sponsored cultural centres, the company did not have any specific policy on human rights nor mechanisms for carrying out human rights due diligence.

56. Equally, in meetings with officials at the Ministry of Energy, which regulates the activities of SOCAR and other companies in the energy sector (including AzerEnergy and Azerigaz), the Working Group found that there was very limited awareness of the State's particular responsibility to exercise scrutiny and oversight of State-owned and -controlled companies and to ensure that they conduct effective human rights due diligence.

57. The Working Group was informed that there had been many cases of complaints in the context of projects in which SOCAR was involved, in particular by people whose property had been affected by the construction of plants and pipelines. SOCAR officials explained that these cases were dealt with by national courts. They did not consider that the company, a commercial organization, had any role in facilitating access to grievance mechanisms, including at an operational level, which, as prescribed by Guiding Principles 28 and 29, should be directly accessible to individuals and communities.

58. The Working Group was encouraged to learn that SOCAR, together with an international partner, is carrying out a social impact study in advance of a planned construction project to mitigate adverse human rights impact to the community. The Working Group, however, received no specific information on SOCAR policies and procedures relating to social impact assessments. According to the information received, however, the initiative to undertake such an impact assessment generally came from international partners. While peer learning in the sector is important, the Working Group considers that the Government should intervene to support and, where appropriate, demand human rights due diligence by companies.

59. The human rights risks and impact of large-scale development projects in the oil and gas sectors have been illustrated by the Bakz-Tbilisi-Ceyhan (BTC) oil pipeline, built from 2003 to 2005, crossing through Azerbaijan, Georgia and Turkey. The pipeline is owned and operated by a consortium of 11 energy companies, managed by BP, the largest shareholder (30 per cent); SOCAR is the second largest shareholder (25 per cent). In the face of criticism levelled by civil society groups about a possible negative impact on human rights, BP set up an independent external panel to assess the economic, social and environmental impact of the BTC pipeline project. BP also took initiative to issue a "human rights undertaking", which guaranteed that the host government agreements entered into with the BTC consortium would not limit the ability of host Governments to comply with their obligations under international human rights treaties.

60. Lessons from the BTC pipeline can inform construction of the Southern gas corridor project due to commence in 2015. This mega-project will involve the construction of a 3,500 km pipeline to carry natural gas from in Azerbaijan to southern Italy. The Working Group appreciated the scale of the project when it visited outside Baku the Sangachel terminal (operated by a BP-led consortium), where the pipelines start, one of the largest oil and gas processing plants in world.

61. The pipeline will be made up of three main parts: the South Caucasus Pipeline (SCP) passing through Azerbaijan and Georgia; the Trans-Anatolian Pipeline (TANAP) through Turkey; and the Trans-Adriatic Pipeline (TAP), through Greece, Albania and Italy. Each part will be constructed and operated by different business consortiums.

62. In Azerbaijan, the construction project involves the expansion of an already existing pipeline operated by a consortium of seven major companies, headquartered in seven

different States: BP (United Kingdom, 28.8 per cent), Statoil (Norway, 15.5 per cent), Lukoil (Russian Federation, 10 per cent), NICO (Islamic Republic of Iran, 10 per cent), TPAO (Turkey, 19 per cent) and two Azerbaijani companies: Azerbaijan South Caucasus Pipeline, Ltd. (AzSCP) (10 per cent) and SGC Midstream (6.7 per cent). AzSCP is a commercial affiliated company of SOCAR incorporated under the laws of the Cayman Islands, while SGC Midstream was established by SOCAR as part of the Southern Gas Corridor project.

63. The State's responsibility to ensure adequate human rights due diligence in the construction of the Southern gas corridor extends beyond its own borders, given that SOCAR is the operator and majority shareholder of the TANAP consortium that will construct the 2,000 km-long pipeline through Turkey, and also holds a 20 per cent stake in the TAP consortium.

64. In December 1999, a presidential decree established the State Oil Fund of the Republic of Azerbaijan (SOFAZ), with the objectives of (a) preserving macroeconomic stability, ensuring fiscal-tax discipline, decreasing the dependence on future oil revenues and stimulating the development of the non-oil sector; (b) providing intergenerational equality, retaining oil revenues for future generations; and (c) funding important socioeconomic projects on a national scale. SOFAZ, which operates as a sovereign wealth fund, is also a component of the annual budget.

65. In meetings with the management of the State Oil Fund, the Working Group was impressed by the strategic outlook and prudent approach to managing the wealth generated by oil revenues, particularly in human capital and socioeconomic projects for the benefit of future generations.

D. Construction industry

66. The construction sector has witnessed a veritable boom in the past decade, as seen in the large-scale redevelopment in Baku in particular since 2006. Although jobs have been created in the construction sector, concerns have also been raised about the manner in which expropriations, evictions and demolitions have been carried out and about non-competitive construction contracts having been awarded to well-connected business people.

67. Owing to the brevity of its visit, the Working Group was unable to visit any current construction projects in Azerbaijan, nor was it able to meet with building companies. The experts did, however, discuss the impact of the construction sector on human rights with relevant government departments and civil society organizations, and was informed about a number of public reports on the issue prior to its visit.

68. In this regard, the Working Group recalls the recommendations made by the Committee on Economic, Social and Cultural Rights in 2013 concerning information on cases of forced evictions, unlawful expropriations and demolitions with little or no notice (E/C.12/AZE/CO/3, para. 22). The Working Groups also notes that the European Court of Human Rights, in the case of *Akhverdiyev v. Azerbaijan* of 29 January 2015, found a violation relating to unlawful forced relocation and the demolition of property.

69. According to another report, a number of construction projects had entailed expropriation, evictions and demolitions carried out in a way that was inconsistent with both national and international human rights law.[21] It looked at four areas in Baku,

[21] Human Rights Watch, *"They Took Everything From Me": Forced Evictions, Unlawful Expropriations, and House Demolitions in Azerbaijan's Capital*, February 2012

including the Bayil neighbourhood where the Baku Crystal Hall was constructed before the Eurovision song contest in 2012. The authors reported that the Government's programme of urban renewal, comprising new parks, roads, a shopping centre and luxury residential buildings, entailed the illegal expropriation of hundreds of properties, the forcible evictions of homeowners and the refusal to provide fair compensation based on market values.

70. While the Working Group was informed that measures had been taken to improve urban planning and development, it also took note of information received during discussions held with civil society organizations on the problems that remain. As a number of ongoing and future construction projects are undertaken, such as the White City urban renewal project that aims to redevelop a derelict part of Baku, the Working Group urges the Government and all business enterprises involved to carry out human rights due diligence, in accordance with the Guiding Principles and the specific guidance provided by the Committee on Economic, Social and Cultural Rights (in particular its general comment No. 7), the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and in the basic principles and guidelines of development-based evictions and displacement (see A/HRC/4/18, annex I).

E. Labour rights

71. The Azerbaijan 2020 development concept document sets the objective of strengthening efforts to ensure safe and healthy working conditions, including through the preparation of a new State programme. One important challenge is that approximately 67 per cent of the population work without formal labour contracts in the informal economy, and therefore fall outside the protection of the Labour Code. The situation of women in the workplace also requires special attention. It is estimated that only one third of women are in salaried employment and a significant disparity exists between the incomes of men and women.

72. The Working Group welcomes the Government's commitment to increase the minimum wage to 60 per cent of the average income, in accordance with the stipulations of the European Social Charter (in 2014, the minimum wage was equivalent to 22.9 per cent of the average monthly wage). The Working Group was informed that the Government's objective was to gradually increase the minimum wage so that it would be equivalent to 30.8 percent of the average monthly wage by 2018, 41.4 per cent by 2018, and 60 per cent by 2020. The Working Group urges the Government to act on that commitment and thus address the large number of workers on low incomes. It noted that the current minimum wage is below the national poverty line. In this regard, it also notes the observations of the ILO Committee of Experts on the Application of Conventions and Recommendations, in which it requested the Government to indicate the measures it intended to take so that the national minimum wage could provide low-paid workers with a decent standard of living.[22]

73. Ongoing efforts to ensure registration of labour contracts, notably through the electronic information system under the "e-Government portal", should improve oversight of labour conditions, including issues related to working children in the informal economy. In this regard, the Working Group recalls the recommendations made by the Committee on the Rights of the Child in its concluding observations in 2006 (CRC/C/AZE/CO/2) and a study by the Statistical Committee of Azerbaijan and ILO-IPEC in which it was estimated

[22] Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012) concerning the Minimum Wage Fixing Convention, 1970 (No. 131) – Azerbaijan.

that more than 156,000 children under the age of 18 were engaged in some form of economic activity.[73]

74. The Working Group noted how persons with disabilities face particular challenges. In this regard, the Government has established a quota system requiring private companies to hire a certain percentage of their workforce for citizens with specific social protection needs and who would otherwise have difficulty in finding employment (decree no. 212 of 23 November 2005). Depending on their number of employees, companies must reserve between 3 and 5 per cent of workplaces for such persons, including people with disabilities. Despite such measures, however, the ILO reports that the proportion of disabled persons involved in labour activity has declined over the past decade.[74] In the information received, the main problems identified related to inadequate accessibility of work places to persons with disabilities and inadequate control and sanctioning of non-compliance with the prescribed quotas reserved for vulnerable groups. Furthermore, in May 2014, the Committee on the Rights of Persons with Disabilities, noting that the number of people benefiting from the quotas was very low, recommended that the Government ensure enforcement through effective sanctions and complement such efforts with programmes to enable persons with disabilities to participate effectively in the labour market (CRPD/C/AZE/CO/1, paras. 42-43). According to statistics provided by the Government, as at 1 January 2015, the number of able-bodied persons with disabilities was 494,988, while the number of quota jobs identified by the State Employment Service in 2014 totalled 2,275 in 758 enterprises, including 1,100 jobs for persons with disabilities.

75. The Working Group also discussed these issues with the Office of the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman), which has assumed the functions of the independent monitoring mechanism specified in article 33, paragraph 2 of the Convention on the Rights of Persons with Disabilities.

76. During its meetings, the Working Group was able to explore the work of the State labour inspectorate in monitoring and enforcing laws and regulations concerning occupational health and safety, including through regular on-site visits. It also discussed these issues with workers and the management of an aluminium plant in Ganja, employing 1,400 workers. Although the Working Group was informed that health facilities also reported accidents to the labour inspectorate, it was unclear whether this was consistently done in practice. The experts observed that there was a need to improve further the collection of data on occupational health and safety, including through closer cooperation between the Ministry of Labour and the State Statistical Committee.

77. The Working Group also explored the situation of trade unions and issues relating to collective bargaining. Even though the practice of collective bargaining is still relatively new in the Azerbaijan, the number of collective agreements has steadily grown in recent years, from 9,460 in 2001 to 11,890 in 2010.

78. The Working Group noted that more than 85 per cent of workers currently belong to one of the approximately 1,600 trade unions in the country. The Trade Unions Act of 1994 stipulates that a trade union may be set up by a minimum of seven people, should be allowed to work without interference, and that discrimination against trade union members is prohibited. The Working Group nonetheless heard reports that, in practice, trade unions did not always act fully independently of the Government. It also noted the observation of the ILO Committee of Experts on the Application of Conventions and Recommendations, on the need for additional measures to encourage and promote collective bargaining

[73] State Statistical Committee of Azerbaijan and ILO-IPEC, *Working children in Azerbaijan: The analysis of child labour and laboring children surveys*, 2005.

[74] ILO, Decent Work Country Profile: Azerbaijan, 2012, p. 33.

between trade unions and employers and their organizations, without interference by the public authority.[25]

79. During its meeting with national trade union representatives, the Working Group heard their accounts of problems related to the right to join trade unions of workers in multinational companies in the oil and gas sector. The representatives of the Azerbaijan Trade Union Confederation complained of the difficulties posed in establishing trade unions within the said companies. Similar concerns were raised with ILO by the International Trade Union Confederation, noting in its above-mentioned observation that, "despite an adequate protection of trade union rights in law, trade union activities in multinational companies were often reprimanded in practice, that employers often delayed negotiations, unions rarely participated in determining wage levels and were often bypassed in the conclusion of bilateral agreements between the Government and multinational enterprises".[26]

VI. Access to remedy

A. State-based judicial mechanisms

80. Ensuring access to effective judicial mechanisms is an essential component of the requirements set out in the Guiding Principles. In dealing with business-related human rights abuses, accessible and effective judicial remedies are particularly important in the light of the imbalances between the parties to business-related human rights claims.

81. In discussions on the challenges faced with regard to access to remedies for business-related human rights abuses, government officials highlighted the various judicial mechanisms in place to address such grievances, including the labour inspectorate and the accessibility of courts throughout the country. The Ministry of Justice informed the Working Group that a system was in place to provide free legal aid to needy families. At the same time, it was clear from the Working Group's meetings with a range of civil society actors that there were also concerns about the effectiveness of the court system in some cases. Such concerns are also reflected in the National Anti-Corruption Action Plan (2012-2015), which includes the preparation of proposals "on limiting the scope of immunity of judges from criminal prosecution in the context of combating corruption".

82. The Guiding Principles highlight how corruption can block access to effective remedies for human rights abuses by business enterprises. The commentary to Guiding Principle 26 clarifies that States should ensure that the provision of justice is not prevented by corruption of the judicial process, and that courts are independent of economic or political pressures from other State agents and from business actors. To ensure that agencies tasked with enforcing and monitoring compliance with laws, regulations and policies that require business enterprises to respect human rights are effective and accountable, the Working Group particularly encourages anti-corruption efforts focused on the integrity of officers involved in law enforcement at the district level and in the judicial sector.

[25] Observation (CEACR) – adopted 2013, published 103rd ILC session (2014), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Azerbaijan.

[26] Ibid.

B. State-based non-judicial grievance mechanisms

83. In addition to courts and administrative tribunals, non-judicial mechanisms also play an important role in ensuring access to remedy for business-related abuses. In particular, national human rights institutions are often empowered to examine complaints on human rights violations. This is also the case of the Ombudsman.

84. According to the annual report of the Ombudsman, in 2013, the Office of the Ombudsman, including four regional centres, received 13,670 appeals, of which 75.8 per cent were complaints. The complaints typically concerned issues such as delivery of identity cards, registration, responses to information queries, land and property, damage caused by natural disasters, pensions and allowances, social aid, restoring the work place, the execution of court decisions, and payment of alimony and loans. A total of 709 complaints concerned violations of labour rights, in particular failure of the employer to pay (or to pay when due)wages, employment without a regular work contract, long-term leave or dismissal without payment. According to the Ombudsman, in most cases, the rights of citizens were upheld following due investigation.

85. The Working Group was informed that the Ombudsman is not empowered to consider complaints concerning business enterprises. The Ombudsman may, however, cooperate with State authorities to investigate complaints about business stakeholders. The Ombudsman has in fact established a working group on business and human rights with the objective of promoting corporate social responsibility. According to the annual report of the Ombudsman for 2013, one of the priorities of the working group is to define the mechanisms for investigation of complaints and for the elimination of violations, ensuring their effectiveness, conducting monitoring in workplaces jointly with authorized bodies on protection of labour rights, set-up of a hot-line service, and strengthening measures to eliminate discrimination in labour relations. To date, the Working Group has held discussions on such themes as "Child rights and business", "Observing ecological requirements in the realization of business", "Business and women's rights" and "Protection of rights of persons with disabilities from the context of business and human rights".

C. Non-State-based grievance mechanisms

86. Although the Working Group was informed about a number of grievance mechanisms currently operated by multinational corporations present in Azerbaijan, there seemed to be little understanding of the value of such non-State grievance mechanisms by local companies. While operational-level grievance mechanisms are not meant to substitute judicial mechanisms in cases of more serious human rights abuse, they can play an important role in providing access to remedy for individuals or communities who are adversely affected by a business enterprise, as also explained in Guiding Principle 29.

VI. Strengthening the policy framework

87. One of the stated objectives of the Azerbaijan 2020 development concept is to develop "a strategy and State programme on corporate responsibility". The Working Group encourages the Government to realize that objective through an open and inclusive process, in cooperation with businesses and civil society, to develop a comprehensive national plan of action on business and human rights that draws on the Guiding Principles. Such a process could build upon and draw experience from different initiatives already under way, including the national action plan and programme on human rights, and multi-stakeholder

dialogue conducted through the *Extractive Industries Transparency Initiative*, national councils and State committees.

88. In December 2014, the Working Group issued specific guidance for the process of developing a national action plan on business and human rights. The Working Group considers that such national action plans, and the process to develop it, should ideally provide for (a) greater coordination and coherence within government on the range of public policy areas that relate to business and human rights; (b) an inclusive process to identify national priorities and concrete policy measures and action; (c) transparency and predictability for interested domestic and international stakeholders; (d) a process of the continuous monitoring and evaluation of implementation; (e) a platform for ongoing multi-stakeholder dialogue.

89. The process of developing a national action plan on business and human rights should also involve the identification of ways to improve access to remedy for victims of adverse business-related human rights impact through both State-based and non-State-based grievance mechanisms, in accordance with Guiding Principles 25 to 31.

VII. Conclusions and recommendations

90. **The Working Group notes the political commitment of the Government of Azerbaijan to the Guiding Principles on Business and Human Rights, and its pledge to develop a national action plan to implement them.**

91. **The meetings held during the visit with Government officials and local business enterprises revealed that issues concerning business and rights are not well understood or known about.**

92. **Free and vibrant social dialogue is critically important to the promotion of business and human rights. Consequently, the Working Group is deeply concerned at the plight of independent civil society organizations in Azerbaijan; in particular, the arrest of prominent human rights defenders suggests that the opportunity to air views in open discourse is severely limited. In this way, policymakers are denied valuable input and opinions, their consideration of which might significantly benefit the State's development.**

93. **The specific recommendations of the Working Group are made on the assumption that all actors – the Government, business enterprises, civil society organizations and international development partners operating in Azerbaijan – respect and abide by the Constitution and international human rights standards.**

94. **The Working Group recommends that the Government:**

(a) Raise awareness and build the capacity of civil servants and lawmakers on issues concerning businesses and human rights from the perspective of the Guiding Principles;

(b) Set out clear expectations in government policy that any and all business enterprises in Azerbaijan respect human rights throughout their operations;

(c) Require all State-owned or -controlled companies to perform human rights due diligence, for both their domestic and international operations;

(d) Develop a national action plan on business and human rights based on the guidance on national action plans on business and human rights developed by the Working Group;

(e) Strengthen mechanisms for multi-stakeholder dialogue on business and human rights issues, for example by building upon the working group on business and human rights coordinated by the Office of the Commissioner for Human Rights (Ombudsman);

(f) Allow independent civil society non-governmental organizations to operate without bureaucratic hindrance or denial of legitimate funding for their activities;

(g) Enable the media and civil society to be effective checks on both business enterprises and public officials by increasing transparency on business activities, corporate governance and other public registry information;

(h) Expand the number of Azerbaijan Service and Assessment Network centres to facilitate the exchange of information about and ensure the accessibility of public services;

(i) Require that those who may be affected by development activities receive timely and complete information about planned projects, such as for urban renewal, and that people are not evicted from their homes without prior consultation and consent, or agreed compensation with provision for human rights safeguards;

(j) Include human rights considerations in public procurement policies, including the corporate responsibility to protect human rights in the terms of procurement contracts;

(k) Integrate the responsibility to conduct human rights due diligence into State-investor contracts, and concessions for extraction of natural resources and production-sharing agreements;

(l) Support the further development and strengthening of tripartite social dialogue, including the full independence of trade unions, and ensure that proposals made by social partners are taken into consideration in policymaking;

(m) Step up efforts to ensure that the national minimum wage provides low-paid workers with a decent standard of living;

(n) Improve collection of data on the situation of groups that may be vulnerable to discrimination and abuse, including working children;

(o) Strengthen measures to allow persons with disabilities to have access to the labour market, including improved oversight of the compliance of enterprises with the prescribed quotas reserved for persons with disabilities;

(p) Conduct a review of access to effective remedy with a view to strengthening both judicial and non-judicial mechanisms to identify and effectively address business-related human rights abuses;

95. **The Working Group recommends that business enterprises:**

(a) Comply with their responsibility to respect international human rights and labour standards, including by adopting a human rights policy, conducting human rights due diligence, to identify, prevent, mitigate and account for how they address adverse human rights impact, in compliance with the Guiding Principles;

(b) In assessing actual or potential adverse human rights impact, ensure meaningful consultation with potentially affected individuals and communities, paying particular attention to potentially vulnerable or marginalized groups, and ensuring that they have timely and complete information about proposed projects or changes that may affect them;

(c) Pay special attention to how different risks may affect women and men differently, for example, with regard to projects involving land and resettlement;

(d) In cases where this can serve to identify and address adverse impact, establish or participate in operational grievance mechanisms in accordance with the criteria set out in Guiding Principle 31;

(e) Engage in the development of the national action plan on business and human rights;

(f) Engage with the Global Compact Local Network in Azerbaijan and with business associations to promote, and learn from the experience of others in, the implementation of the Guiding Principles;

(g) Use their leverage, where appropriate, to raise human rights concerns with the Government.

96. **The Working Group recommends that civil society organizations:**

(a) Assist in raising awareness about the respective obligations and responsibilities of State and business enterprises under international human rights laws to prevent and address adverse human rights impact related to the operations of business enterprises;

(b) Engage in the development of the national action plan on business and human rights.

97. **The Working Group recommends that international development partners support the Government's efforts to protect human rights, and promote corporate respect for human rights, including by strengthening institutions charged with overseeing business activities and by creating space and platforms for multi-stakeholder dialogue.**

98. **The Working Group recommends that the home States of transnational business enterprises operating in Azerbaijan clearly set out the expectation that business enterprises domiciled in their territory and/or jurisdiction respect human rights in all their global operations, as stipulated by the Guiding Principles.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Addendum

Report on the First African Regional Forum on Business and Human Rights*,**

Summary

The present document provides a summary of the discussions of the African Regional Forum on Business and Human Rights, held from 16 to 18 September 2014, in Addis Ababa, and the conclusions and recommendations by the Working Group based on its reflections on the proceedings. The agenda for the Forum, the text of the main statements and the documents submitted by some of the participants can be found on the Working Group's website.[1]

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

** The appendix is circulated as received.

[1] www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx

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Annex

[English only]

Report on the First African Regional Forum on Business and Human Rights

Contents

		Paragraphs	*Page*
I.	Introduction and background	1–3	3
II.	The African Regional Forum	4–7	3
III.	A vision for implementing the United Nations "Protect, Respect and Remedy" Framework across Africa	8–14	4
IV.	Identifying key business and human rights challenges and opportunities across the continent	15–20	5
V.	Preventing and addressing adverse human rights impacts in the extractive industries: challenges, opportunities and current practice	21–29	6
VI.	Discussions on access to remedy	30–49	8
	A. Multi-stakeholder consultation on enhancing access to judicial remedy for corporate involvement in human rights impacts	30–40	8
	B. Access to non-judicial remedy: experiences and lessons from the continent in ensuring access to remedy for affected stakeholders through operational-level grievance mechanisms	41–49	10
VII.	Business and human rights in the African context	50–65	11
	A. Integrating the corporate responsibility to respect human rights across African businesses: challenges and opportunities	50–60	11
	B. An African strategy to advance the business and human rights agenda	61–66	13
VIII.	Groups, contexts, sectors and national action plans	67–96	14
	A. Supporting and protecting human rights defenders and the role of national human rights institutions	67–71	14
	B. Business and human rights in conflict contexts	72–83	14
	C. Investment in land: applying a human rights lens	84–89	16
	D. Strengthening implementation of the State duty to protect human rights through a national action plan	90–96	17
IX.	Closing plenary: the way forward for the African business and human rights agenda	97–105	18
X.	The Working Group's reflections on the proceedings of the regional forum: conclusions and recommendations	106–108	20
Appendix			
	Highlights from side events and list of panel speakers		24

I. Introduction and background

1. The endorsement of the Guiding Principles on Business and Human Rights (hereinafter, the Guiding Principles)[2] by the Human Rights Council in June 2011 in its resolution 17/4 represented a milestone in global efforts to close governance gaps between the scope and impact of economic actors and the capacity of society to manage their adverse impacts. This provided for the first time a United Nations-backed framework to define the respective duties and responsibilities of Governments and business enterprises for preventing and addressing adverse human rights impacts arising from business activities. In order to advance the Guiding Principles, the Human Rights Council established the Working Group on the issue of human rights and transnational corporations and other business enterprises with a mandate to promote the dissemination and implementation of the Guiding Principles worldwide.[3]

2. As part of its efforts to engage a wider set of actors, the Working Group decided in November 2012 to organize regional forums to complement the annual Forum on Business and Human Rights.[4] Such regional forums would seek to enable more direct engagement with stakeholders charged with putting the three pillars of the Guiding Principles into practice "on the ground", including Government institutions, national business associations, business enterprises with a regional and domestic reach, national and local civil society groups, and regional organizations and mechanisms. The first regional forum, for the Latin America and the Caribbean region, was held from 28 to 30 August 2013 in Medellín, Colombia.[5]

3. In June 2014, in its resolution 26/22, the Human Rights Council welcomed the work of the Working Group in the fulfilment of its mandate, including the convening of regional forums to discuss challenges and lessons learned from the implementation of the Guiding Principles with States and other stakeholders in a regional context.

II. The African Regional Forum

4. The African Regional Forum on Business and Human Rights was held in Addis Ababa, from 16 to 18 September 2014. It was convened by the Working Group with the support of the African Union Commission's Department of Political Affairs, the United Nations Economic Commission for Africa (UNECA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The United Nations Development Programme and the United Nations Global Compact also assisted with the organization of the event.

5. The regional forum aimed to promote multi-stakeholder dialogue and cooperation on business and human rights and the implementation of the Guiding Principles in Africa, with a view to: (a) advancing the business and human rights agenda in the region and promoting progress with regard to all three pillars of the United Nations "Protect, Respect and Remedy" Framework; (b) identifying regional implementation experiences, challenges and opportunities; (c) identifying opportunities for embedding the Guiding Principles in

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[2] The Guiding Principles are contained in the annex to document A/HRC/17/31.

[3] See, inter alia, Human Rights Council resolution 22/26.

[4] See outcome of the third session of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/WG.12/3/1, para. 17.

[5] See www.ohchr.org/EN/Issues/Business/Forum/Pages/2013LACRegionalForumBusinessandHumanRights.aspx.

regional and subregional governance frameworks, and exploring the synergies between the Working Group's mandate and the work of regional and subregional African institutions and mechanisms; (d) identifying linkages between the business and human rights and sustainable development agendas from a regional perspective; and (e) promoting and supporting capacity-building opportunities in relation to the Guiding Principles.

6. The forum was open to all relevant stakeholders, including Governments, international and regional bodies, global, regional and domestic business, industry associations, trade unions, affected persons and community members, civil society, national human rights institutions, the United Nations and other international organizations. Approximately 200 individuals from all the stakeholder groups participated, which included participants travelling from some 30 African countries. In addition, several diplomatic missions based in Addis Ababa attended.

7. The event featured 12 official panel sessions and seven side events over three days.[6] Side events addressed both general and more specialized aspects concerning implementation of the Guiding Principles. The official plenary and parallel sessions focused on ways to advance implementation of the Guiding Principles across Africa, including by enhancing access to remedy for business-related human rights abuse, sector-specific trends and challenges (respectively in the extractive sector and in land investment), challenges faced by African business in implementing the corporate responsibility to respect human rights, building an African strategy on business and human rights, the importance of national action plans to implement the Guiding Principles and, in particular, the challenges and roles of national human rights institutions and human rights defenders in promoting corporate accountability. The human rights issues featured on the forum's agenda reflected inputs solicited by the Working Group in its pre-consultations with stakeholder groups.[7]

III. A vision for implementing the United Nations "Protect, Respect and Remedy" Framework across Africa

8. During the high-level opening session, aimed at setting out a vision for implementing the Guiding Principles in the region, all speakers acknowledged the importance of the regional forum, emphasizing its role of fostering multi-stakeholder dialogue and advancing the business and human rights agenda in Africa. They also referred to the importance of the Guiding Principles and called for joint efforts to promote their implementation in the region.

9. The representative of the Working Group stressed that the Guiding Principles served as the key reference point for global efforts to strengthen the protection of human rights in the context of business activities, highlighting that they were not "voluntary" guidelines but grounded in legally binding norms and standards and provide authoritative guidance on the application of existing core international human rights treaties in that area. All African States were encouraged to initiate inclusive multi-stakeholder processes to develop national action plans on business and human rights. Steps taken to initiate such processes in the

[6] Summaries of the side events and the names of panel speakers are included in the appendix to the present report. The African Union Commission and the European Union also jointly organized a seminar on business and human rights on the margins of the regional forum (see http://pa.au.int/en/content/african-union-and-european-union-cooperate-promote-un-principles-business-and-human-rights).

[7] See in particular submissions from the Business and Human Rights Resource Centre, available from www.ohchr.org/EN/Issues/Business/Forum/Pages/SubmissionsAfricaRegionalForum.aspx.aspx.

region, including in Ghana, Morocco, Mozambique and the United Republic of Tanzania, were welcomed.

10. In highlighting some of the human rights issues facing the continent, a representative of the Working Group called strongly for multi-stakeholder dialogue and cooperation, noting that it was only through a dialogue between all parties — States, business enterprises, national human rights institutions, civil society and affected communities — that effective solutions could be found.

11. The representative of the African Union Commission noted that African leaders agreed that business and human rights is a crucial issue. Attention was drawn to the 2011 African Union human rights strategy for Africa, which sought to address the current challenges facing the African human rights system in ensuring effective promotion and protection of human rights on the continent. Additional steps that had been taken with regard to business and human rights specifically were also highlighted, including: (a) creation of the African Commission's Working Group on Extractive Industries, Environment and Human Rights Violations; (b) development of the African Mining Vision; and (c) strong advocacy by many national human rights institutions on the continent regarding business and human rights issues, based on the Guiding Principles.

12. The representative of the African Union Commission reiterated its commitment to the Guiding Principles and the development of an African framework on business and human rights based on the Guiding Principles.

13. The representative of UNECA said that the protection of human rights was compatible with business, and that there was a need for a human rights-based approach to development, as a crucial part of the post-2015 agenda. It was underlined that there was a need for a common African position on how business could be most beneficial for human rights and that the Guiding Principles was a vital document in that regard, as the pursuit of human rights was a social and economic necessity for inclusive and sustainable development and cohesive societies.

14. The representative of the Government of Ethiopia emphasized that, in the efforts of the continent to lift millions out of poverty through economic development, human rights needed to be protected by both Governments and the private sector.

IV. Identifying key business and human rights challenges and opportunities across the continent

15. A central aim of the regional forum was to identify some of the main business and human rights issues in Africa and discuss how various stakeholders could address them by applying the Guiding Principles. Perspectives on the state of play and opportunities for the way forward were shared by different actors.

16. The representative of the International Labour Organization (ILO) welcomed the African Union's interest in the issue and stressed that the contextualization of the Guiding Principles was crucial, including through the development of national action plans. The need for coordination among African Governments was underlined and the key importance for African States to sign, ratify and implement the ILO conventions, in particular the eight ILO core conventions, noted. The progress seen with regard to the application of the ILO conventions in Africa was welcomed and the positive trend of decreased use of child labour was noted. The need to focus on groups that were particularly vulnerable, such as women, migrants or domestic workers, was also highlighted.

17. A representative of Business Africa, representing the perspective of African employers' federations, underlined the need to encourage all stakeholders to commit to

reducing adverse human rights impacts by companies on the ground. With regard to human rights challenges on the continent, it was noted that they differed widely across countries, but problems such as weak governance, the legacy of colonialism, ethnic tensions or poverty were relevant in most parts of Africa. Governments were called upon to do much more, including: (a) strengthening public governance and legal systems to ensure redress, noting that the implementation of the Guiding Principles crucially required rule of law and that weak judicial systems were a major problem; (b) addressing the challenge of the informal sector and facilitating transition to formality; and (c) developing national action plans to implement the Guiding Principles, which should be done in close consultation with business.

18. Another point raised was the need for better dialogue between Western and African Governments, as well as international non-governmental organizations (NGOs). Such dialogue was necessary to help African States avoid the negative impacts of regulation introduced by States in the West, examples being the conflict minerals reporting requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of the United States of America and reported negative impacts for people on the ground in the Democratic Republic of the Congo.

19. The discussion also featured an example to highlight the value of the Guiding Principles as a tool for enhancing multi-stakeholder dialogue: a project called "pillars in practice" where the Guiding Principles had been applied by an NGO in the mining sector in Zimbabwe to address adverse human rights impacts arising from extractive operations. The Guiding Principles had provided a helpful platform for engagement in many ways, including by: enabling a more constructive engagement with the Government and business; and providing an authoritative framework defining the duties and responsibilities of the Government and companies.

20. However, it was noted that, despite the progress, there was still mistrust and hostility from business and Governments towards civil society and collaboration needed to improve.

V. Preventing and addressing adverse human rights impacts in the extractive industries: challenges, opportunities and current practice

21. Human rights challenges in the extractive sector had been identified as a key issue for the regional forum and, during multi-stakeholder discussions, participants sought to shed further light on those challenges, as well as innovations in corporate practice, public policy and civil society advocacy.

22. The work of the African Minerals Development Centre to support implementation of the African Mining Vision was highlighted. That framework, adopted by the African Union Heads of State and Government in February 2009, establishes that the extraction of mineral resources on the continent should be in accordance with labour standards and respect for human rights.

23. An important development cited was the establishment of the Working Group on Extractive Industries, Environment and Human Rights Violations of the African Commission on Human and Peoples' Rights in 2009 with a mandate to examine the impact of the extractive industries in the light of the African Charter, to research specific issues and to inform the Commission of potential steps to take. The issues that the Commission's working group was examining included: (a) inadequate mechanisms used by companies to engage communities, often made in a "tick-the-box" manner without the possibility for the community to bring alternatives to the table; (b) environmental impact assessments that

frequently did not reflect the requirements set by relevant laws and standards; (c) the effect of extractive industries on access to land; (c) lack of coherence within Governments; (d) access to remedy; and (e) free prior and informed consent.

24. Experiences were shared by the Government of Ghana. It was noted that the country was benefiting significantly from mining, but there was serious environmental and social damage occurring, such as water pollution, destruction of land, community resettlement and concerns related to noise from project sites. Examples of how the Government was seeking to address those issues included: mechanisms to ensure adequate compensation for people who needed to be resettled; efforts to strengthen communication between mining companies and communities; and adherence to the Voluntary Principles on Security and Human Rights.

25. With reference to experiences of advocacy relating to a World Bank-financed project in the extractive sector in Chad, it was observed that, in a context where there was a relative absence of Government, civil society took over the role of trying to protect people from negative impacts. However, civil society actors faced a number of challenges related to: (a) lack of democracy and possibilities for political participation; (b) lack of access to education; (c) impunity of those in power; asymmetric power relations and government-business collusion; and (d) lack of effective avenues for access to justice.

26. A participant from a major mining corporation noted that respecting the rights of communities was the right thing to do, but that there was also a "business case" for it. Among the challenges experienced by that corporation in implementing the Guiding Principles, the following were noted: migration issues — mining projects attracting people and the influx of people bringing social problems; security at the project site and the question of what capacities and instruments could be given to private security providers; and Governments that failed to respect human rights.

27. An industry-based multi-stakeholder initiative with a specific business and human rights focus was presented at the forum as one possible model for overcoming challenges. The so-called "Nairobi Process" aimed to embed the Guiding Principles in the oil and gas sector in East Africa and included three main work areas: creating knowledge — gaining understanding of human rights risks; capacity-building — informing and training stakeholders; and establishing a space for dialogue with Government, civil society and companies.

28. Research showed that the oil and gas sector in East Africa (which consisted mainly of small and medium-sized companies) had both positive and negative impacts: positive — creation of livelihood opportunities, some support for education and sometimes improved access to water; negative — inadequate information causing conflicts with communities, lack of sustainability of the investment and non-respect of community land rights.

29. Several other aspects relating to the oil and gas sector were addressed during the Forum, including: (a) the need for companies to respect human rights regardless of how Governments were meeting their respective duties; (b) the frequent failure to engage and informing communities before decisions about licensing were made; (c) community engagement and how to deal with community complaints about impacts of mining operations; and (d) the role of companies in Ebola-affected countries.

VI. Discussions on access to remedy

A. Multi-stakeholder consultation on enhancing access to judicial remedy for corporate involvement in human rights impacts

30. The aim of the session was to seek input from African experts and stakeholders for a consultative process led by OHCHR, in cooperation with the Working Group, pursuant to Human Rights Council resolution 26/22, which requested OHCHR to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses.

31. It was stressed that access to effective remedies for victims of human rights abuse was a critical component of any legal system and of all the core international human rights treaties. It was also a central component of the Guiding Principles and the third pillar on access to effective remedy.

32. As part of the project it was leading on enhancing accountability and access to remedy in cases of business involvement in human rights abuses, OHCHR had commissioned a study on corporate liability for gross human rights abuses and ways to move towards a fairer and more effective system of domestic law remedies. In brief, the study, which examined a number of jurisdictions, found that:[8]

(a) The expanding net of liability was not yet translating into an effective system of remedies in practice;

(b) The current tendency of litigants to favour action in foreign courts was costly and inefficient and might have adverse consequences in the longer term;

(c) There were uneven levels of legal protection and inequalities in the ability of victims to access justice;

(d) There was currently a lack of legal certainty for both victims and companies;

(e) There was lack of a level playing field for companies.

33. The ongoing consultative multi-stakeholder process was addressing several aspects, including:

(a) Clarification of the various tests for corporate liability currently applied in different jurisdictions;

(b) Roles and responsibilities of interested States in relation to standard-setting and enforcement;

(c) Identification of good State practice in relation to three key areas of focus:

(i) Funding for legal claims;

(ii) Criminal law sanctions (corporate legal responsibility, innovative practice in different jurisdictions);

(iii) Civil law remedies;

(d) The practice of domestic prosecution bodies (why cases were not taken up even if the domestic institution was in place).

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[8] The slides from the presentation are available from www.ohchr.org/EN/Issues/Business/Forum/Pages/Statements.aspx.

34. Forum participants heard from a person affected by the 2004 Kilwa massacre in the Democratic Republic of the Congo, in which a mining company had provided logistical support to security forces that committed the violations. That personal account demonstrated the stark reality faced by victims seeking access to remedy. Efforts to seek justice both in domestic courts and abroad had failed to bring results, even 10 years after the event. It was noted how litigation in Canada against the implicated company domiciled there had first seemed to be possible as the Supreme Court had accepted the case, but that then the case was dismissed on grounds of a lack of jurisdiction. During the process, the litigants had been informed that the mining company involved in the massacre had been sold to another company.

35. Another perspective shared by a participant was on the experience of the national human rights institution in Ghana and its function as a quasi-judicial mechanism. Several challenges with regard to ensuring access to remedy for victims were highlighted, including: (a) a lack of protection of human rights in investment law and failure by involved ministries to take access to remedy for victims into account; (b) in spite of regulation on the requirement and a procedure for compensation on land acquisition, a general gap in access to judicial remedy; and (c) a lack of funding for legal aid.

36. Another key issue discussed was the need for capacity-building, including the role of the State in ensuring capacity-building for communities and business. Participants called for further clarification of the concept of company liability and complicity, as well as of the criteria for company due diligence. With regard to the roles and responsibilities of interested States in cross-border cases, it was suggested that host States would welcome the support and cooperation of home States in cases of corporate involvement in gross human rights abuses.

37. Civil society organizations involved in litigation also gave their perspectives during the discussion on access to judicial remedy. One recommended that the approach of strategic litigation in national courts should be tested further. It was suggested that bringing selected cases to court would be a good way to promote legal reform, citing experience from South Africa. It was noted that non-judicial remedy was also important, and that stakeholders should try to make best use of the resources currently available within their own jurisdictions.

38. Several challenges involved in bringing cases of corporate-related human rights abuses to national courts were highlighted, including:

(a) In some jurisdictions, collective litigation was not accepted;

(b) Victims lacked financial support and legal assistance;

(c) There was a lack of capacity at community level: when human rights violations occurred, the victims could not document the facts to bring a case to court;

(d) Companies could not be prosecuted in the host States due to weak enforcement of the rule of law. At international level, it was also hard to get access to remedy. Knowledge about the cost and process to bring cases to courts in other jurisdictions was elusive;

(e) Lack of political will.

39. A representative of African employers' federations suggested that non-judicial mechanisms had an important role to play in providing access to remedy, as they were often less expensive and faster to use than judicial mechanisms. It was noted that, in some countries, the lack of political will, of an independent judicial system, of financial support and of a modern case-management system and the presence of corruption all undermined trust in the judicial system. Suggestions for addressing those gaps included making an

effective national legal system a criterion for accessing international funds. The way forward required action from Governments, but also increased awareness among companies about the need to implement grievance mechanisms.

40. During the discussion on judicial remedy, participants also emphasized the challenges faced by people living in poverty whose human rights were adversely affected by business operations and the need to improve access to legal aid, the possibility of utilizing existing mechanisms, such as consumer protection, and greater potential leverage in cases involving listed companies as opposed to non-listed companies.

B. Access to non-judicial remedy: experiences and lessons from the continent in ensuring access to remedy for affected stakeholders through operational-level grievance mechanisms

41. The aim of the session was to examine lessons and experiences of operational-level grievances mechanisms across African business operations and reflect on the challenges and opportunities in aligning current practice with the criteria set out in the Guiding Principles to ensure effective remedy outcomes.

42. A premise for the discussion was that operational-level grievance mechanisms could have some advantages in certain circumstances, as they: could act as a system of early warning and early response; provided a process of trust-building among different stakeholders; and served as a mechanism to manage expectations of projects and facilitate community engagement.

43. It was also pointed out that non-judicial mechanisms could fill some of the gaps related to weak governance in some countries.

44. Participants from business suggested that non-judicial grievance mechanisms could be fast and cost-effective, if they kicked in at an early stage, all parties were involved, the expectations held by all parties were clear and the mechanisms were geared towards preventing grievances. With reference to mechanisms such as the Organization for Economic Cooperation and Development system of national contact points and industry-level systems, it was noted that such mechanisms could solve issues more quickly given the use of industry knowledge and expertise. However, it was also underlined that such mechanisms were only effective when people were aware of them and trusted them. In that regard, a main challenge was a lack of resources and consistency. Moreover, it was stressed that non-judicial remedy processes should not undermine judicial remedy, and that States needed to provide a conducive legal environment to level the playing field.

45. Several NGOs gave their views. One NGO shared an example from Kenya, where one company grievance mechanism had handled the issue of childcare needs among workers. The company subsequently set up a childcare facility. It was noted that grievance systems could help companies detect and mitigate problems. However, grievance mechanisms also had limitations. For example, they could not deliver punishment for serious abuses, and workers might be reluctant to use them from fear for losing their jobs. With regard to conducive regulatory frameworks, the standard set by the Employment Act in Kenya with regard to terminating contracts was referenced. It was suggested that it might be helpful if a similar standard was used for operational-level grievance mechanisms.

46. Another key issue underlined was the need for stakeholders to sit down together in an impartial manner to solve issues. It was suggested that States should have a policy to encourage legal remedy and promote grievance mechanisms at company level, and that victims should have options to use all mechanism available. The mechanisms needed to have clear timetables to be efficient and strategic.

47. One participant highlighted the experience of promoting operational-level grievance processes in Nigeria, arguing that each grievance mechanism needed to be tailored to the respective project. Such mechanisms could facilitate early warning and early response, but could not handle serious human rights violations, only smaller conflicts. Grievance mechanisms could serve as a platform for building relationships between different stakeholders and a forum for dialogue, and help to manage the expectation of projects and facilitate community engagement. The cost of grievance mechanisms should be budgeted into the cost of projects, and Governments should encourage companies to have such mechanisms and set standards.

48. A representative of the World Bank Group's Compliance Advisor Ombudsman (CAO), which had been set up to receive complaints directly from people affected by projects sponsored by the International Finance Corporation or the Multilateral Investment Guarantee Agency, also took part in the discussion. It carried out dispute resolution, assessing compliance with International Finance Corporation safeguards (which covered elements of the second pillar of the Guiding Principles) and advising stakeholders. The Ombudsman received complaints when grievance mechanisms at company level either failed or did not exist and, in its experience, the problem was not a lack of human rights-related policies at company level, but rather a lack of implementation of existing policies. It was noted that some problems could be solved through mediation and, as part of the Ombudsman process, local institutions, local Government and local non-governmental organizations could all play a role.

49. All participants stressed the need for joint stakeholder action and that the operational-level grievance mechanisms should meet all criteria set out in the Guiding Principles. It was recalled that the non-judicial remedy process should not undermine the right of victims to access to judicial remedy. A key issue was how to ensure the independence of and trust in operational-level mechanisms.

VII. Business and human rights in the African context

A. Integrating the corporate responsibility to respect human rights across African businesses: challenges and opportunities

50. The aim of the session was to identify key challenges and opportunities in implementing the second pillar of Guiding Principles (the corporate responsibility to respect human rights) in the operations of African-based business enterprises, as well as to share emerging good practice to address human rights issues.

51. The discussion highlighted both the potential contribution of the Guiding Principles and some critical challenges for the success of their uptake:

(a) The Guiding Principles could help companies do good business and become good corporate citizens;

(b) In Africa, 80 per cent of companies were small and medium-sized enterprises (SMEs), most of which lacked of awareness about responsible business and the Guiding Principles;

(c) The issue of corruption led to problems in the implementation of laws.

52. Participants stressed that all stakeholders needed to be involved in addressing those challenges and generating an environment which fostered business respect for human rights, and that Governments had a particularly important role to play in bringing about real, transformational change.

53. The discussion also highlighted the emerging recognition that negative impacts on human rights could also have negative impacts on economic success, which was prompting shareholders to increasingly raise questions about human rights issues. As a consequence, it was argued, businesses increasingly wanted to do the right thing. However, challenges such as complex supply chains, a lack of senior management buy-in and the cost implications of human rights due diligence processes mean that companies were not progressing as fast as many would like them to.

54. One participant expressed the view that asymmetric power relations between the State and transnational corporations presented the greatest challenge.

55. Attention was drawn to the vital role that trade unions could play in improving the situation for workers and an example from Ghana was referred to. In 2008, trade unions uncovered abusive conditions for workers in several camps of a Chinese company. The trade unions stepped in and managed to improve the working conditions drastically to make sure the workers got contracts, higher salaries and social security. Engagement with the diplomatic mission had been important in succeeding in that case.

56. As an example of how civil society engaged with business to promote corporate respect for human rights, the representative of the Business and Human Rights Resource Centre drew attention to the organization's approach of posting information from all stakeholders and confronting stakeholders with the allegations it received, asking for comments.

57. Participants gave specific examples of company engagement with external parties aimed at integrating the Guiding Principles into company operations, including:

(a) Nestlé's partnership with the Danish Institute for Human Rights to develop a human rights due diligence programme, including human rights impact assessments in Nigeria and Angola; Nestlé's partnership with the Fair Labor Association on child labour issues, and similar kinds of collaborations involving other companies, including with International Alert in Uganda;

(b) A human rights impact assessment conducted and published by Kuoni in Kenya (tourism sector).

58. The discussion covered lessons from other regions, and the experience of the European Commission in promoting the Guiding Principles was shared with regional forum participants. Attention was drawn to various guidelines that could prove useful in the context of African business:

(a) Sector-specific guidance for implementing the Guiding Principles for the following industries: the employment and recruitment industry; the information, communication and technology sector; and the oil and gas sector;

(b) A booklet for SMEs called "My business and human rights" which provides an introduction into the field in simple language.

59. Other initiatives by the European Commission to strengthen the implementation of the Guiding Principles were flagged as well, such as: encouraging States to develop national action plans on business and human rights; and transparency requirements for large companies from the European Union, which would require companies to report on non-financial issues and thereby enhance transparency on their human rights impacts and measures taken to address them.

60. The discussion also covered issues such as the role of media as a tool to press relevant stakeholders to implement the Guiding Principles, and the challenges of carrying out human rights due diligence on the ground and building the awareness and capacity of relevant staff within companies.

B. An African strategy to advance the business and human rights agenda

61. The aim of the session was to reflect on options for developing an African strategy on business and human rights through leadership at the regional level, including through promoting development of national action plans.

62. During the discussion, participants highlighted the steps taken by African national human rights institutions to promote implementation of the Guiding Principles and that business and human rights was a priority for the regional network of national institutions. At the network's 2011 conference in Yaoundé, three key areas had been identified: land rights, water and work conditions. With regard to an African regional strategy on business and human rights, the African network of national human rights institutions stressed the following elements as important:

(a) The need to contextualize the Guiding Principles both at country and continental level and identify innovative approaches by all actors;

(b) The Guiding Principles should be integrated in existing processes and become a priority at the African Union level;

(c) The African Union should consider developing a legally binding instrument;

(d) The role of national human rights institutions should be recognized.

63. Civil society participants highlighted and challenged two assumptions that often formed the basis of the business and human rights debate in Africa: first, the notion that Africa had "weak States" was seen as problematic because States were not as weak as they were often made out to be; second, the emphasis on the need for large-scale development could be used as a pretext to ignore concerns raised by local communities.

64. It was argued there was a need to change the conversation, with emphasis on the following points:

(a) Communities needed to have the right to choose their own path to development;

(b) Customary law needed to be taken seriously;

(c) Community experience needed to be the starting point;

(d) Communities needed to be involved before a project was decided upon in order to have the possibility of refusing consent.

65. Those four points were already enshrined in African instruments, such as the African Charter and the resolution of the African Commission on Human and Peoples' Rights on a human rights-based approach to natural resource governance or the African Land Policy Initiative.

66. A representative of UNECA highlighted the need to identify the common interests of companies and States regarding human rights, pointing to the paradox of simultaneous high economic growth rates and increasing poverty in sub-Saharan Africa. The need for inclusive development based on a human rights-based approach was stressed; two crucial issues were access to education and health and the need for States to ensure adequate regulation, including of private-sector service providers.

VIII. Groups, contexts, sectors and national action plans

A. Supporting and protecting human rights defenders and the role of national human rights institutions

67. The session aimed to identify challenges faced by human rights defenders and discuss how the Guiding Principles clarify the respective duties and responsibilities of States and business and corresponding actions to address those challenges. A key issue was the role that national human rights institutions could play.

68. It was highlighted that the human rights defenders working on issues related to environmental protection, indigenous peoples, minority rights, people living in poverty and construction projects frequently experienced serious attacks and harassment.

69. With regard to the role that national human rights institutions played in protecting the human rights of human rights defenders, whether they were representatives of NGOs, community-based organizations, trade unions or journalists, several mechanisms were highlighted: possibilities for receiving complaints and carrying out investigations and public hearings; public awareness campaigns; parliamentary submissions; reports to regional and United Nations bodies; authoritative public statements/opinions; and influence on relevant laws and policies.

70. Factors that enabled national institutions to play such roles included: the integrity of commission members and appointment process; financial and operational independence; a comprehensive legislative process, including an enforcement process; and the existence of other effective institutions supporting the "embedding" of a human rights culture, e.g. an independent judiciary and an effective parliament.

71. It was further stressed that, if national human rights institutions were to be credible, they must have a clear mandate and acquire powers set out in law/from the national constitution.

B. Business and human rights in conflict contexts

72. The session aimed to discuss challenges and good practices related to the implementation of the Guiding Principles in conflict-affected areas and identify ways to strengthen preventive measures and the implementation of the State duty to protect human rights and ensure security.

73. Participants argued that the profit-seeking character and pragmatism of companies had in some cases benefited communities and societies in conflict-affected areas. On the other hand, that same pragmatism had led companies to focus on security measures with the resulting risk of becoming complicit in human rights abuse, as demonstrated by emblematic cases, such as the trade in conflict diamonds (Liberia, Sierra Leone and Zimbabwe) and oil extraction (Niger delta).

74. Guiding Principle 7 was recalled, which clarifies that the risk of human rights is heightened in conflict-affected areas, and States should therefore intervene at the earliest stage possible, provide support for companies in their due diligence, deny support to companies involved in grave human rights abuses and make sure that regulations and policies were appropriate to meet the specific risks of conflict-affected areas. Companies should, as set out under the second and third pillars of the Guiding Principles, conduct due diligence and, where a violation has taken place, ensure mediation and access to remedy.

75. Concerning possible ways to strengthen the State duty to protect, it was suggested there was a need for the home countries of transnational corporations to strengthen direct regulation, given the often weak governance systems in conflict-affected areas. Several participants expressed the view that, for grave human rights impacts, it should be possible to hold corporate entities liable under international human rights law.

76. Attention was also drawn to the outcome of the 2013 International Conference in the Great Lakes Region on natural resources in Bujumbura, which identified the following main challenges:

(a) States frequently did not respect their own laws nor regional and international standards;

(b) It was difficult to collect credible information on the situation on the ground;

(c) The negotiation and content of contracts between the Government and companies were often highly politicized and lacked transparency;

(d) Extractive industries could have negative impacts on access to land, food security and health;

(e) The most important challenge was often the lack of political will to address those issues as well as lack of good governance and exclusion of civil society.

77. In order to address those challenges, three priorities were highlighted: strengthening the inclusion of civil society; strengthening the rule of law; and raising awareness of business and human rights issues among the population, including through media campaigns.

78. Another focus of the discussion was the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict and how it related to the Guiding Principles. The former was adopted in 2008 and defines how international law applies to the activities of private military and security companies when they are operating in an armed conflict zone. It contains a set of good practices designed to help States take measures nationally in order to fulfil their obligations under international law. As such, it is a voluntary initiative and not legally binding. It was clarified that the initiative focused on States because, although problems with private military and security companies had long existed, there was a general lack of national oversight and no international regulation. To date, 50 States had joined that initiative of the Government of Switzerland and the International Committee of the Red Cross.

79. The discussion also underlined the fact that conflicts could occur in seemingly peaceful environments. In that regard, South Africa was given as an example, where there had been cases of conflict around extractive industry sites, including the Marikana incident where 39 miners were killed in clashes with security forces. Participants argued that it was crucial to unpack what "heightened due diligence" meant in those contexts, because a lot of things could go wrong if due diligence was not carried out properly.

80. With regard to the issue of security and dealing with private and public security forces, it was stressed that there were many existing guidelines, such as the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Service Providers, but that, in order to increase incentives for companies to adhere to them, there was a need for better legislation.

81. International Alert's guidance on conflict-sensitive business practice was highlighted as an available tool for conducting impact assessments in conflict contexts. Companies needed to assess their impacts from a rights-holder's perspective; some participants argued that standard social and environmental impact assessments to a large

extent took a company perspective and failed to engage with communities' concerns. Human rights impact assessments were seen as much more promising in that regard.

82. It was further stressed that companies needed to act ethically and with integrity and, if that was not possible, they should not invest. A key question to be asked of companies investing in mines being built at the beginning of a project was whether the mine could be built without a bullet being fired. If not, it was suggested that companies should probably not invest in the first place. The need for a zero-harm policy not only for company staff but also for the community was emphasized. Besides avoiding negative impacts, companies should use their leverage and engage with stakeholders and communities to try to help resolve existing or emerging conflicts in peaceful ways.

83. Further discussion addressed: different types of conflict scenarios in which companies were operating and the need for meaningful community engagement and empowering communities and civil society to be in a position to manage impacts; the relationship between the Guiding Principles and the Voluntary Principles on Security and Human Rights; the need for integrating gender analysis into any corporate activity in conflict-affected areas; and how companies could contribute positively to improving State conduct.

C. Investment in land: applying a human rights lens

84. The session aimed to identify challenges and opportunities in implementing the Guiding Principles in land-related investments and business activities. The focus was on agribusiness and large-scale land investments, including the implications of impacts on women's rights.

85. The discussion highlighted several key human rights issues, such as a lack of consultation with local communities, loss of land and land acquisition without fair compensation, forced resettlements, food insecurity and loss of livelihoods, and poor working conditions for those employed in the sector. Case studies of corporate land investments carried out by Oxfam were referred to, which found that, even if a company had good policies and practice in relation to land rights, women were not commonly involved in the consultation process and their land rights were not respected. The lack of recognition of the rights of women and adverse impacts on their rights among investors was found to be prevalent, and there was an urgent need to ensure empowerment and meaningful engagement of affected women in that context.

86. The South African Human Rights Commission had also uncovered cases where projects that were publicized as demonstrating good practice with regard to respect for human rights showed a different reality, and that the affected poor community had not been empowered to engage meaningfully. It was suggested that good practice would include elements such as gender-sensitive budgets that supported promotion of gender equity.

87. A business representative stated that the Guiding Principles provided a good starting point for companies to deal with business and human rights issues. In terms of practical approaches, the need to build trust among different stakeholders and engender mutual communication were emphasized and, at the same time, it was noted that such processes took time and that companies faced a range of challenges (political history and context, social expectations, environmental concerns, agronomical targets, economic costs and the legal landscape) that had to be balanced. Free, prior and informed consent and participatory approaches were seen as key elements for ensuring sustainable investments.

88. Human rights due diligence was also increasingly included in the portfolio of corporate law firms, as it was increasingly seen as presenting opportunities for investors. The experience by one major firm of advising clients investing in natural resources and

land to increasingly bringing human rights into investment negotiations and "putting humans into the corporate speak of due diligence" was shared. A number of elements to be considered for moving towards better practices and contracts were highlighted, including short durations, specifying the land and resources that were being allocated, flexibility to re-negotiate contracts, making entitlements of investors subject to national law and development priorities, avoiding "stabilization clauses" and ensuring transparency.

89. Finally, the guidance on State-investor contracts by the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises was highlighted as a key reference.[9]

D. Strengthening implementation of the State duty to protect human rights through a national action plan

90. Another main objective of the forum was to promote development of national action plans for implementing the Guiding Principles in Africa and identify essential elements of such plans that would be of particular relevance in the local context. Thus, a key session of the event was the panel focused on national action plans, which also served the purpose of consultation with local stakeholders on the Working Group's efforts to develop guidance to support States in developing national action plans.[10]

91. A key message from the Working Group on Business and Human Rights throughout the event was that national action plans were especially well-suited to advancing policy coherence and implementation of the Guiding Principles.

92. The experience of the Government of Mozambique in developing a strategy for implementing the Guiding Principles through a 2013 national initiative was shared at the forum. The Government's efforts would eventually result in a baseline study and drafting of a national action plan. In that context, the need for broad consultations with all relevant stakeholders and the Government's need for financial and technical support, from international donors as well as international and regional organizations, were emphasized.

93. Another example was given by a representative of the Moroccan National Human Rights Commission. It had launched a multi-stakeholder dialogue process and started work to produce reports on specific issues, all which were going to feed into a national action plan to be developed by the Government. Four points were emphasized:

(a) There was a need to sensitize Governments to the very specific problems which must be tackled;

(b) There was a need to include all stakeholders;

(c) While it was important to have guidance from the Working Group, business and human rights challenges differed across countries, so national action plans would be different from one country to another;

(d) National human rights institutions were very important in many regards: they helped evaluate the situation, played a role in bringing stakeholders together and could support capacity-building.

94. The session also featured the presentation of a toolkit developed by the International Corporate Accountability Roundtable and the Danish Institute for Human Rights, intended

[9] See annex II.

[10] This guidance document was launched in December 2014. Available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

to guide States and other actors in developing national baseline studies and national action plans. A number of specific issues relevant to national action plans in the African region were raised: the role of international investment agreements; legislation pertaining to environmental impact assessments; the impact of foreign direct investment; addressing transparency and accountability of State-linked businesses; and the sharing of knowledge among different States.

95. Further discussion addressed the position held by some that the Guiding Principles and the development of national action plans, and the idea of a binding international treaty on business and human rights were in opposition to each other. It was argued that this was a mistake, and that independently of deliberations on a treaty, there should be focus on developing plans that addressed the existing business and human rights challenges in various countries. Three main issues were highlighted:

(a) Gender: there was a need to look at the impacts which were specific to women;

(b) Conflict zones: business and human rights challenges were very particular in such contexts;

(c) The need to tackle issues of extraterritoriality and access to remedy.

96. Other issues addressed during the discussions included the different challenges facing developed and developing economies, as well as the need to look at the issue of tax avoidance as a central business and human rights challenge.

IX. Closing plenary: the way forward for the African business and human rights agenda

97. Speakers in the high-level closing plenary reiterated the importance of the Guiding Principles as an authoritative framework to prevent and address adverse human rights risks and impacts of business activities, and emphasized the urgent need to scale up its implementation across the continent.

98. The United Nations Resident Coordinator in Ethiopia stressed that economic growth needed to be coupled with respect for human rights, and human dignity needed to be at the centre of development. It was further stated that the Guiding Principles offered practical and complex guidance to States and businesses to make that happen. The United Nations system was a relevant partner for Governments in that effort but, importantly, African strategies should be driven by African actors.

99. From a pan-African business viewpoint, human rights were just one of dozens of considerations that companies must take into account every day. While the type of involvement by companies depended on the challenges faced, the contexts in which they operated and their core business, the responsibility to respect human rights was nevertheless the same for all companies. One critical challenge was that the concept of human rights due diligence had yet to enter the business arena in Africa, and there was a need for capacity-building. It was further emphasized that the Guiding Principles provided a useful framework for addressing problems, and need to be contextualized at company level and integrated into company strategies.

100. With regard to the role of civil society in advancing the business and human rights agenda in Africa, a number of challenges were highlighted, although it was noted that not all were relevant for all countries: disparity between growth in gross domestic product and human development; a lack of an independent judiciary; operations by foreign providing

revenues to oppressive authorities; corruption; and the need to strengthen rule of law. Specific suggestions regarding the role of civil society included:

(a) The need to ensure that civil society was invited to and had the resources to take part in international conferences such as the 2014 Africa Summit convened by the Government of the United States of America;

(b) The need for African civil society organizations to work more closely with home States of transnational corporations to clarify the actual problems on the ground;

(c) African civil society organizations should use the United Nations system, including the special procedures of the Human Rights Council, the universal periodic review and the treaty bodies to request action on business and human rights by their respective Governments;

(d) Explore the development of an international tribunal to adjudicate some of the gross human rights violations involving business enterprises;

(e) Address tax justice issues, as illicit financial flows were seen as an important part of current problems.

101. In the closing remarks from the representative of the African Union Commission, the commitment to engage with the Working Group to develop an African strategy to implement the Guiding Principles was reiterated. Moreover, the potential of national action plans to ensure constructive national dialogue and effective implementation of the Principles, which ultimately should contribute to the well-being of individuals on the continent, was emphasized.

102. The members of the Working Group noted that the forum had been an unprecedented event, convening for the first time such a range of stakeholders from the whole region to come together to discuss business and human rights issues. The forum had also shown that increasing attention was being paid to the effects of economic growth and investment on the environment and the human rights of workers and local communities. The Working Group recalled in that regard that African States had played an active role in the development of the United Nations Framework, and joined the global consensus endorsing the Guiding Principles. It also underlined the crucial role of civil society and affected stakeholders in demanding greater accountability, and recalled how many participants had pointed to the potential of the Guiding Principles as a platform for breaking political deadlock, and for transcending the adversarial roles that too often characterized relationships between communities and companies.

103. In going forward, the Working Group highlighted the following issues as critical to achieving progress:

(a) The importance of national action plans: they should be based on inclusive consultation and result in focused actions to strengthen prevention and remedy of adverse business-related human rights impacts;

(b) The need to enhance access to remedy, strengthen the independence of the judiciary and build capacity to address business and human rights abuses;

(c) Ensure that economic growth did not come at the cost of human rights.

104. Among remaining challenges that needed further attention, the members of the Working Group highlighted the lack of transparency surrounding State-investor contracts and the activities of State-owned enterprises, as well as lack of oversight over booming sectors in the region, such as agribusiness, telecommunications and retail.

105. Finally, the members of the Working Group stressed the need for solutions that took into account those challenges, and acknowledged the realities of twenty-first century

globalization. In going forward, the Working Group concluded that the dialogue among the key economic and political actors driving global corporate accountability, including the African Union and stakeholders in the region, must continue.

X. The Working Group's reflections on the proceedings of the regional forum: conclusions and recommendations

106. **The Working Group would like to express its appreciation to organizing partners, supporters and all participants for their contributions to making the regional forum a successful event. It was encouraged by the interest in and support for the Guiding Principles expressed by the wide range of stakeholders who participated, as these actors form a critical part of the movement that is needed to scale up action on the Guiding Principles in all regions.**

107. **The discussions at the regional forum made a significant contribution in informing the Working Group's efforts to promote the effective implementation of the Guiding Principles worldwide. Based on the inputs from participants, the Working Group would like to make the following observations and recommendations:**

(a) The Regional Forum provided a unique opportunity for multi-stakeholder dialogue and cooperation on business and human rights among relevant actors in Africa: multi-stakeholder engagement, involving all relevant groups, should be a central element for further progress, both at regional and national levels, in order to ensure effectiveness and legitimacy;

(b) In order to take advantage of the momentum created by the regional forum, strengthen the sharing of experiences and practices on implementation of the Guiding Principles across countries in the region and continue to reinforce the links between the global and regional business and human rights agendas (including to inform the annual Forum on Business and Human Rights),[11] the Working Group encourages stakeholders in Africa to convene local business and human rights forums to share lessons and discuss solutions to aspects related to implementation of the Guiding Principles;

(c) Effective implementation of the Guiding Principles requires ownership by local stakeholders, and the Working Group commends the African Union Commission for its commitment to promoting concrete action plans, tailored to the realities of African countries, to implement the Guiding Principles.[12] The Working Group would like to encourage the African Union Commission and relevant mechanisms of the African Commission on Human and Peoples' Rights, in particular the Working Group on Extractive Industries, Environment and Human Rights Violations, to support the development of such national action plans in alignment with the Guiding Principles and in collaboration with itself and OHCHR;

(d) All stakeholder groups at the regional forum stressed the importance of national action plans on business and human rights. These were seen as a means to strengthen accountability and access to remedy and to ensure that human rights become an integral part of efforts to promote economic growth and development does not come at the expense of those rights. The Working Group calls on all African States

[11] The next annual Forum will be held in Geneva, Switzerland, from 16 to 18 November 2015.

[12] See OHCHR press release, "UN and AU commit to advance business and human rights agenda in Africa", 18 September 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15053&LangID=E.

to develop national action plans to implement the Guiding Principles, through transparent and inclusive processes that involve all relevant stakeholders, including business, civil society and persons affected;

(e) The Working Group welcomes the work already done by many national human rights institutions in the region to promote implementation of the Guiding Principles. It would like to encourage national institutions in all countries to give focused attention to the area of human rights and business and promote the implementation of the Guiding Principles, including by building their own capacity and that of other stakeholders and supporting the development of national action plans in their respective countries

(f) The Working Group is concerned by reports of continued — and in some instances, increasing — adverse business-related human rights impacts across the continent, including relating to the difficult situation of human rights defenders, negative impacts on the human rights of communities affected by extractive projects and land investments, disproportionate impacts on women and children, impacts on livelihoods and health, violations of core labour rights and serious abuse involving public and private security forces engaged by companies;

(g) The Working Group calls on all African States and business enterprises in the region — both domestic and transnational corporations — to meet their respective duties and responsibilities set out in the Guiding Principles: the State duty to protect against human rights abuse, the corporate responsibility to respect human rights and the need to enhance access to remedy for victims. It also calls on home States of transnational corporations to play a constructive role;

(h) The Working Group has identified a lack of transparency and of access to information in the context of investments and large-scale business operations as a key challenge, and it recommends that Government and business actors ensure meaningful engagement with affected stakeholders, human rights defenders, civil society organizations and national parliaments, in order for stakeholders to get access to all relevant information that may have implications for their human rights. In that regard, the Working Group refers to the guidance provided in the principles for responsible State-investor contr

(i) Greater transparency, combined with adequate space for civil society and free media, is also critical to addressing another issue highlighted at the forum: the challenges of corruption and tax evasions, involving both Government officials and companies, which undermine the capacity of the State to fulfil the basic economic and social rights that are being neglected;

(j) The Working Group is particularly concerned by the lack of progress in ensuring access to effective remedy for victims of business-related human rights abuse. It calls on States to meet their duty to ensure access to effective remedy, through judicial and non-judicial mechanisms, including by addressing barriers to access to justice and strengthening the independence and capacity of the judiciary. Companies should establish or take part in joint efforts to set up operational-level grievance mechanisms for directly affected stakeholders that are in line with the criteria set out in the Guiding Principles;

[13] See report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31/Add.3.

(k) The Working Group is pleased to support the current OHCHR initiative to enhance accountability and access to remedy in cases of business involvement in human rights abuses and the programme of work that aims to contribute to a fairer and more effective system of domestic law remedies in cases of business involvement in severe human rights abuses. It encourages African stakeholders to contribute to that initiative;[14]

(l) The Working Group encourages civil society organizations across the continent to ask Governments to develop national action plans to implement the Guiding Principles and to use and submit information to international human rights mechanisms, such as the universal periodic review, the special procedures of the Human Rights Council and the human rights treaty bodies, to raise awareness of business-related human rights impacts in the region, and strengthen the calls on States and businesses to implement the Guiding Principles;

(m) The Working Group welcomes the work done by employers organizations, industry associations and the United Nations Global Compact and its Local Networks to raise awareness among African businesses of the Guiding Principles, and would like to encourage the scaling up of those efforts, including through capacity-building efforts and collaboration with civil society, national human rights institutions and the United Nations system;

(n) The Working Group encourages donors and international organizations to support African Governments in developing national action plans to implement the Guiding Principles and support civil society organizations in their role of demanding greater action and accountability on business and human rights.

108. **The Working Group seeks to continue to pursue the organization of regional forums, subject to donor funding, in order to strive towards the purposes for which they were designed:**

(a) To gather relevant stakeholders in the region together, so that they can: (i) engage together in a process designed to identify existing challenges to human rights posed by business operations in their region; (ii) consider how the Guiding Principles can be employed in the best way to address those challenges; and (iii) galvanize action on those issues following the regional forum;

(b) To feed into the annual forum, so that (i) the annual forum reflects real-life challenges and practices on the ground and (ii) the Working Group can take good practices identified in the region and share them more widely at the annual forum.

[14] See www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx.

Appendix

[English only]

Highlights from side events and list of panel speakers

I. Highlights from side events

A. Key features and implications of the Guiding Principles on Business and Human Rights

1. A key objective of the regional forum was to offer an opportunity for capacity building to participants. To this end, the first day included a training session on the Guiding Principles, conducted by OHCHR.[a] Participants were given an overview of the state of play and the "what to do" in this field, notably the key elements of the three pillars of the Guiding Principles and the respective roles of States and business:

(i) The State duty to protect against human rights abuse resulting from business activities through appropriate policies, regulation and adjudication;

(ii) The corporate responsibility to respect human rights by acting with due diligence to avoid infringement on human rights and addressing adverse impacts that do occur;

(iii) Enhancing access to effective remedy for victims of business-related human rights abuse, through both judicial and non-judicial grievance mechanisms.

2. Participants learned about the main features of the Guiding Principles and that they apply to all States and to all companies, of all sizes, in every sector, and in any country; contain distinct, but complementary duties, responsibilities and roles of States and companies; contain no new legal obligations, but elaborate on the practical implications of existing international legal obligations of States and standards and practices for business; clarify that human rights cannot be "offset", meaning that philanthropic activities cannot compensate for human rights harms elsewhere; and contain a "smart mix" of both regulatory and voluntary approaches.

3. During the discussion a number of frequently asked questions were addressed:

- *If the Guiding Principles themselves are not a legally binding document, how does civil society monitor their implementation, and what are the implications of the proposed treaty on business and human rights*: It was clarified that the Guiding Principles are based on existing international human rights law, and that civil society is encouraged to use the Guiding Principles as a benchmark in their monitoring of States' performance, including to ask questions to States about what actions they are taking to implement the Guiding Principles in processes such as the Universal Periodic Review and human rights treaty body reporting. With regard to the proposed treaty, it was noted that at this stage it is unclear what it will look like, but that proponents of a treaty generally argued that such instrument would build upon the framework set out in the Guiding Principles.

[a] The presentation is available at http://www.ohchr.org/Documents/Issues/Business/ForumSession3/IntroductionUNGuidingPrinciplesBusinessHR_en.pdf.

- *How to deal with the conflict between international law and national law*: It was clarified that the Guiding Principles do not tell companies to break the law in the countries they are operating, but also recognize that sometimes national laws are in conflict with international legal standards, in which case the Guiding Principles prescribe that the responsibility of companies to respect human rights exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and thus exists over and above compliance with national laws and regulations.

- *What is the relationship between Guiding Principles and corporate social responsibility (CSR)*: Participants heard that the Guiding Principles set out the minimum standards for companies when it comes to human rights — that is, to ensure that they do no harm and respect human rights wherever they operate — but that there is nothing in the Guiding Principles that prevent them from pursuing CSR activities that go beyond these minimum standards.

B. Human rights and business tools

4. With the objective of providing regional forum participants with an overview of some of the tools available to stakeholders in the area of business and human rights, a joint session was hosted by the United Nations Global Compact and the Business and Human Rights Resource Centre.

5. The Global Compact Kenya Local Network gave a brief introduction on the United Nations Global Compact, the UN Guiding Principles and the relationship between these two mechanisms. Reference was made to various activities carried out by Local Global Compact Networks to promote business and human rights, such as a "human rights and business dilemmas" forum, trainings, sharing good practice notes and case studies, and promotion of several special initiatives. The topics ranged from access to water, business in conflict, child labour, decent jobs, gender equality, and human trafficking to product misuse.

6. The Business and Human Rights Resource Centre introduced how it works as an information hub on different issues in relation to business and human rights. Its website now includes the profiles of 5000 companies, featuring concerns raised by NGOs about human rights abuses by companies and the responses from companies, positive initiatives by companies, the work of United Nations Working Group as well as some regional briefings on key business and human rights trends. The Resource Centre has representatives and researchers in all regions, including several in Africa, covering the different sub-regions.

7. Discussion with the audience focused on the Resource Centre's approach to publish concerns about alleged human rights impacts of individual companies and to invite implicated companies to respond after receiving the concerns raised by other stakeholders. It was noted that companies appreciate this approach, and that at the same time, the Resource Centre also publishes the positive initiatives of companies.

C. Human rights reporting in the African context

8. A session focused on human rights reporting was hosted by Shift. It was organized as a consultation composed of two parts: the first part focusing on human rights reporting in the African context, and the second part seeking views on the human rights reporting

framework being developed by Shift through the Reporting and Assurance Frameworks Initiative ("RAFI").[b]

9. The introduction provided participants with an overview of current trends for human rights reporting, highlighting that there is increasing demand for information from companies on their human rights performance. Research conducted during the mandate of former Special Representative of the United Nations Secretary General on business and human rights, John Ruggie, was highlighted, in which 20 law firms in 39 jurisdictions (including Africa) looked at how corporate and securities laws were evolving to reflect human rights.[c] This research showed that the demand for sustainability reporting was on the rise. More recent research by Shift had found a further increase in demands for corporate reporting specifically on human rights from a wide range of stakeholders, including international organizations, national legislators, regulators, stock exchanges, and investors. Many of these initiatives reference the Guiding Principles as a key framework for reporting.[d]

10. Other panel presentations provided perspectives from both business and civil society angles. From a business perspective, the initial focus was on the drivers for reporting on the African continent, highlighting the increase in demand for information on how companies are integrating the Guiding Principles. It was pointed out that producing this type of information can in turn help companies improve their human rights performance and their relationship with communities, while noting a number of specific challenges that remain, including lack of knowledge and capacity on how to implement the Guiding Principles. Participants also heard from experiences of facilitating dialogue between companies and communities on the ground in Malawi. This contribution highlighted the kind of information that communities are seeking. Communities want information from companies throughout the lifecycle of a project, from the inception, all the way to the winding up of a project. It was underscored that companies' communication needs to be tailored to the situation of communities and include concrete and practical information, such the human rights assessment tools the company is applying, how it is complying with international standards, audit procedures, and its human rights due diligence, and how its plans for meaningful stakeholder engagement. Failure to deliver on such information may have real impacts for a company, as highlighted by cases picked up by the media. Finally, it was stressed that the Guiding Principles provide a good platform for engagement, seeking redress and trust building among key stakeholders.

11. Further discussion with participants highlighted that regulatory frameworks across the continent remain weak and that companies tend to evade their responsibility towards communities and affected stakeholders. Civil society participants also expressed dissatisfaction with the type of information that is currently provided by companies operating in Africa on how they are addressing human rights risks. It was also highlighted that drivers for reporting such as legislation and stock exchange requirements that are

[b] The RAFI web page: http://business-humanrights.org/en/business-and-human-rights-reporting-and-assurance-frameworks-initiative-rafi#recent. A full summary of the session held on 16 September is available at http://business-humanrights.org/sites/default/files/reports-and-materials/Report%20of%20Ethiopia%20Consultation%20-%202014%2009%2016%20Final.pdf.

[c] Human rights and corporate law: trends and observations from a cross-national study conducted by the Special Representative. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31/Add.2, 23 May 2011.

[d] Shift, Update to John Ruggie's Corporate Law Project: Human Rights Reporting Initiatives (2013), available at http://shiftproject.org/sites/default/files/Update%20to%20Corporate%20Law%20Project%20November%202013.pdf.

evolving in other regions, are less at play in Africa, and that currently it is rather civil society organizations that are providing the strongest push behind demands for better disclosure, but that most organizations lack capacity and resources.

12. Shift also presented the ongoing RAFI project, which is seeking to address the increase in demands for corporate reporting on human rights performance and the risk of highly divergent understandings of what this means in practice. The aim of the project is to develop a twin set of frameworks grounded on the Guiding Principles: one with guidance for companies on what good reporting on human rights looks like and the other with guidance on what good assurance of such reports would involve. During the discussion participants raised a number of issues that were relevant both for the African context and beyond, including that reporting cannot replace dialogue with communities, the need to take into account the role of the State, how to ensure accuracy of information provided by companies, ensuring alignment with other initiatives, and ensuring that the data used for reporting actually helps companies improve their human rights performance.

D. Building capacity for participatory monitoring and joint fact finding

13. The World Bank Group Compliance Advisor Ombudsman (CAO) and Global Rights (Coordinator of the African Coalition for Corporate Accountability), with support from the United Nations Global Compact, hosted a practically oriented session entitled "What to do when project impacts are in dispute – Seeking solutions through participatory monitoring and joint fact-finding with companies, communities, CSOs, and governments".

14. The goal of the session was to examine the process through which NGOs can collaborate with companies in monitoring corporate impacts based on guidance from CAO.[c] Participants were given an introduction to the functions of CAO as an accountability mechanism, set up to receive complaints directly from people affected by projects sponsored by IFC or MIGA: through dispute resolution, assessing compliance with IFC safeguards (which includes elements of the second pillar of the Guiding Principles), and advising stakeholders. A specific focus of the session was on participatory water monitoring, defined as "a participatory approach to monitor water. In the process, it not only generates credible data and information but also builds trust and helps resolve or avoid conflict surrounding perceived or actual impacts."

15. Some of the challenges of participatory water monitoring highlighted at the session included:

- Capacity of communities;
- Turnover in companies and communities;
- Unclear legal liabilities, i.e. who is responsible for cleaning things up?
- Role of governments which oftentimes side with companies.

16. The key process elements of participatory water monitoring included:

- Starting point: oftentimes, companies and NGOs do separate monitoring, which leads to dispute over the results and lack in trust;
- Participatory monitoring describes process in which to do the different steps together: collecting, analysing, interpreting, sharing results;
- Idea is to include communities and local stakeholders, so participatory process is not only scientific, but also social, political, and cultural;

[c] Available at http://www.cao-ombudsman.org/howwework/advisor/documents/watermoneng.pdf.

- Goals and outcome: more credibility of data generated, helps to create trust by relevant local stakeholders;
- Can help prevent conflict, but also mitigate conflict;

17. Through discussions that sought to examine the perspectives of the common stakeholder groups in water monitoring — communities, international NGOs, companies and local Governments — the following challenges were identified:

- Communication: when should what be communicated to whom?
- Identification of communities;
- Finding ways/methodologies for the community to participate, e.g. how to ensure representativeness, how to deal with the issue of illiteracy.

E. Community-based human rights impact assessment methodologies

18. Oxfam and the International Federation of Human Rights Leagues (FIDH) hosted a session focused on community-based human rights impact assessment methodologies, introducing the tool 'Getting it right'.[1] This tool is based on six phases: preparation; legal framework; adapting the guide; investigation processes; analysis and report; engagement, monitoring and follow-up.

19. The session addressed the difference notions of social Impact assessment (SIA), human rights impact assessments (HRIA) and environmental impact assessments (EIA), highlighting several dimensions:

- The reference against which operations are analysed differs:
  - SIA: broad range of social impacts;
  - HRIA: impacts on human rights, anchored in international conventions;
  - EIA: impacts on environment;
- Perspective of how they have been applied:
  - SIAs and EIAs are the traditional instruments taken by companies and have mostly been implemented from a strong company-perspective;
  - HRIA methodologies have a stronger focus on the perspective of rights holders.

20. It was noted that there is a general view that with the gaining importance of human rights due diligence, the SIAs will be replaced by HRIAs, and that one of the strong advantages of HRIAs is a clearer understanding of who is responsible for what. However, opinions continue to differ as to what extent HRIAs and EIAs should be integrated.

21. Discussion in the sessions was very rich, with company representatives, community representatives, international NGOs, and academics engaging in very constructive debates on how HRIAs should be carried out in practice.

F. Commerce, crime and human rights

22. The International Corporate Accountability Roundtable (ICAR) and Amnesty International (AI) hosted a side event workshop with invited experts from the African

[1] Available at http://hria.equalit.ie/en/.

region to discuss prosecution opportunities as well as the challenges that currently exist and how to overcome them. The event was convened with the support of OHCHR.

23. The purpose of the event was to gather inputs to the ICAR/AI "Commerce, Crime, and Human Rights Project",[8] and the OHCHR programme of work aimed at enhancing accountability and access to remedy, the aim of which is to develop reliable and credible guidance for States as to how they can contribute to a fairer and more effective system of domestic law remedies, particularly in cases of gross human rights abuses.

24. This discussion identified perceived and actual obstacles that hinder prosecutions, as well as existing laws that may allow for the prosecution of corporate crimes at the national and international level. Participants shared recommendations on how to address obstacles.

25. Some of the obstacles identified included:

(i) The limitations of the structure and mandate of the relevant investigative and prosecutorial offices;

(ii) Corruption among the judiciary;

(iii) Personal jurisdiction limitations;

(iv) Lack of access to evidence.

26. Recommendations put forward included:

(a) Establish and support specialized units that have a full mandate to investigate and prosecute;

(b) Take lessons from the successes of the Foreign Corrupt Practices' Act, leadership of the United States in particular on anti-corruption;

(c) Consider how these obstacles may be addressed through an international agreement;

(d) Better collaboration between and among governments, particularly in cases where multinational companies are involved;

(e) Reform the types of sanctions that are available so that corporate culture can be addressed when necessary.

27. In general, the point was made that not enough cases have been tried in the African region to have a perfect sense of what the key obstacles are, and that more work must be done to ensure that these cases are investigated and tried.

II. List of panel speakers

A. Opening plenary session: A vision for implementing the United Nations "Protect, Respect and Remedy" Framework across Africa

28. The chairperson of the United Nations Working Group, Michael K. Addo, delivered introductory remarks. Opening statements were delivered by the Minister of Justice of Ethiopia, Getachew Ambaye; the Acting Director of the Department of Political Affairs of the African Union Commission, Mamadou Dia; and the Deputy Executive Secretary of UNECA, Abdalla Hamdok.

[8] http://www.commercecrimehumanrights.org/

B. Plenary 2: Identifying key business and human rights challenges and opportunities across the continent

29. The session was chaired by the vice chairperson of United Nations Working Group, Margaret Jungk. Panel participants were ILO Deputy Regional Director for Africa, Dayina Mayenga; Jacqueline Mugo, Secretary General of Business Africa; and Mutuso Dhliwayo, Executive Director of the Zimbabwe Environmental Law Association.

C. Plenary 3: Preventing and addressing adverse human rights impacts in the extractive industries: challenges, opportunities and current practice

30. The session was chaired by Chaired by Valerio Bosco, Economic Affairs Officer in the Mineral Sector Governance Team, Africa Minerals Development Centre, UNECA. Panellists were Sheila Keetharuth, member of Working Group on Extractive Industries, Environment and Human Rights Violations, Africa Commission for People's' and Human Rights; Gifty A.M. Biyira, Director (Adm), Ministry of Lands and Natural Resources, Ghana; Delphine Djiraibe, Senior human rights lawyer and chief attorney at the Public Interest Law Center (Chad); Israel Chokuwenga, Principal Advisor Global Communities and Social Performance, Rio Tinto (South Africa); and Rose Kimotho from the Institute for Human Rights and Business and the Nairobi Initiative (a multi-stakeholder initiative on business and human rights for the oil and gas sector).

D. Parallel track: Discussions on access to remedy

1. Multi-stakeholder consultation on enhancing access to judicial remedy for corporate involvement in human rights impacts

31. The panel was moderated by chairperson of the United Nations Working Group, Michael K. Addo. Panel participants were Lene Wendland, Business and Human Rights Adviser, OHCHR; Dickay Kunda, an affected stakeholder from the Kilwa community in the Democratic Republic of the Congo; Lauretta Lamptey, Commissioner on Human Rights and Administrative Justice, Ghana, and Chairperson of the Network of African National Human Rights Institutions; Angela Mudukuti, Southern Africa Litigation Centre; Emmanuel Umpula Nkumba, African Resources Watch; and Weru Macharia, International Organisation of Employers, Kenya.

2. Access to non-judicial remedy: Experiences and lessons from the continent in ensuring access to remedy for affected stakeholders through operational-level grievance mechanisms

32. The session was moderated by Brian Ganson from Africa Center for Dispute Settlement at the University of Cape Town. Panel participants were Purvi Shah from De Beers Group, Scott Adams from World Bank Group, Sylvia Kithinji from Kenya Human Rights Commission, Franck Loufoua-Bessi from Rencontre pour la Paix et les Droits de l'Homme and Austin Onuoha from the Africa Centre for Corporate Responsibility.

E. Parallel track: Business and human rights in the African context

1. Integrating the corporate responsibility to respect human rights across African businesses: challenges and opportunities

33. The session was moderated by United Nations Working Group member Puvan Selvanathan. The panelists were Manafa Shaffi Masai from Uganda Global Compact Network, Alan Fine from Russell & Associates, Anthony Baah Deputy Secretary-General from the International Trade Union Confederation (ITUC-Africa), Joseph Kibugu from the Business and Human Rights Resource Center and Sophie Mueller from the European Commission.

2. An African strategy to advance the business and human rights agenda

34. The session was moderated by Mamadou Dia, the Acting Director of the Department of Political Affairs of the African Union Commission. The panel included Adrian Gauci from UNECA, Gilbert Sebihogo from the Network of African National Human Rights Institutions, and Wilmien Wicomb from the Constitutional Litigation Unit of the Legal Resources Centre (South Africa).

F. Parallel track: Groups, contexts, sectors and national action plans

1. Supporting and protecting human rights defenders & the role of national human rights institutions

35. Moderator was Ahowanu Agbessi, Regional Representative at OHCHR's Central Africa Regional Office. The panellists were Lindiwe Mokate from the South African Human Rights Commission, James Mwenda from the Kenya National Commission on Human Rights, and former United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya.

2. Business and human rights in conflict contexts

36. Session moderator was Salah Hammad, Senior Human Rights Expert in the African Union Commission's Department of Political Affairs. The panel included Nokukhanya Mnewabe from Business and Human Rights Resource Center, Audrey Olivier-Muralt from Geneva Centre for Democratic Control of Armed Forces (DCAF), Raphael Rene Yoho Fils from MONUSCO and Paul Kapelus from Synergy and the South African Global Compact Network.

3. Investment in land: applying a human rights lens

37. Moderator was Belay Demissie from UNECA. The panellists were Marc Wegerif from Oxfam Tanzania, Nadiah Hanim Abdul Latif from Sime Darby Berhad, Pregs Govender from the South African Human Rights Commission, Maria Alice Mabota from the Human Rights League (LDH) of Mozambique, and Odette Geldenhuys from Webber Wentzel.

4. Strengthening implementation of the State duty to protect human rights through a national action plan

38. Session moderator was the chairperson of Working Group Michael K. Addo. The panellists were Albachir Macassar, National Director for Human Rights at the Government of Mozambique, Nabila Tbeur, Executive Director at Morocco's National Human Rights

Commission, Sara Blackwell from the International Corporate Accountability Roundtable, and Bonita Meyersfeld from the Center for Applied Legal Studies (South Africa).

G. Closing plenary: The way forward for the African business and human rights agenda

39. The session was chaired by the United Nations Resident Coordinator in Ethiopia, Eugene Owusu. The closing remarks were delivered by Margaret Jungk from the Working Group; Kebour Ghenna, the Executive Director of the Pan Africa Chamber of Commerce and Industry; Tutu Alicante, the Executive Director of EG Justice; and Mamadou Dia, the Acting Director of Department of Political Affairs of African Union Commission.